

ESTTA Tracking number: **ESTTA757310**

Filing date: **07/08/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223574
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Date	07/08/2016
Attachments	App. Resp. to MSJ.pdf(355321 bytes ) MV dec. in supp. of resp.pdf(135325 bytes ) Exhibit A v2.pdf(5919455 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Matter of U.S. Application Serial No. 86/518,323  
For the Trademark: MEZQUILA  
Filed: January 29, 2015  
Date of Publication: June 23, 2015

LOS SANTOS LLC, a California Limited Liability  
Company

Opposer,

v.

ROSALIE GABRIEL, an individual citizen of the  
United States, and JOHNNY D. GABRIEL, an  
individual citizen of the United States

Applicant.

Opposition No. 91223574

**APPLICANTS' RESPONSE IN OPPOSITION TO  
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Applicants respectfully submit this Response in Opposition to Opposer's Motion for Summary Judgment. The evidence of record establishes, at a minimum, a genuine issue of fact regarding Applicants' bona fide intent to use the MEZQUILA mark. Opposer's motion should be denied accordingly.

**A. FACTUAL BACKGROUND**

Applicants, Johnny and Rosalie Gabriel, have extensive experience in the liquor business. Johnny Gabriel has been in the liquor business for fifty-seven years.<sup>1</sup> His wife Rosalie has been

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<sup>1</sup> Ex. A, Dep. of Johnny D. Gabriel, March 3, 2016, at 9:18–19; 11:6–7 (“Q. So you’ve been doing the same thing since 1959? A. Yes.”).

in the liquor business for thirty-six years.<sup>2</sup> Applicants have owned approximately 50 retail liquor stores in the greater San Antonio area.<sup>3</sup>

Applicants first developed the idea of producing and selling an agave-based spirit using the MEZQUILA mark during a 2004 trip to Mexico.<sup>4</sup> At the time, a shortage of agave caused a tequila shortage.<sup>5</sup> Applicants needed more tequila to sell in their retail stores, so they traveled to Oaxaca, Mexico searching for additional sources of product.<sup>6</sup> During this trip, Applicants met with different tequila distillers about the possibility of sourcing product for use with the MEZQUILA mark, but were not able to reach an agreement because the prices offered by the distillers were too high.<sup>7</sup>

In late 2015, Applicants renewed their interest in producing an agave-based spirit and began planning to distribute an alcoholic beverage using the MEZQUILA mark.<sup>8</sup> Applicants filed the instant intent-to-use trademark application on January 29, 2015—two months *after* Applicants renewed their interest.<sup>9</sup>

In February 2015, Applicants met with representatives of the Don Ramon Distillery.<sup>10</sup> Enrique Ramon, Alejandro Valdes, and Carlos Arnaiz traveled to San Antonio and met with

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<sup>2</sup> **Ex. A**, Gabriel Dep. at 12–13.

<sup>3</sup> *Id.* at 13:8–9.

<sup>4</sup> *Id.* at 18:12–15.

<sup>5</sup> *Id.* at 18:12.

<sup>6</sup> *Id.* at 18:12–22.

<sup>7</sup> *Id.* at 19:7–15 (“Q. Did you talk to anybody about your idea back in 2004? A. Yes. We met with different distillers in Oaxaca. Q. In 2004? A. Yes. Q. Okay. And did you mention to them the name “Mezquila”? A. I think so.”), 20:5–12.

<sup>8</sup> *Id.* at 21:5–10.

<sup>9</sup> *Id.* (“Q. Okay. And when did you next start thinking about doing the Mezquila product? A. When we -- about two months before we filed a trademark.”).

<sup>10</sup> *Id.* at 22:16–22.

Applicants about sourcing agave for the MEZQUILA product.<sup>11</sup> Applicants discussed different aspects of the distilling and bottling process at this meeting including: taxes and the costs of bottles, bottle-caps, bottle labels, and shipping boxes.<sup>12</sup> The prospect of using Don Ramon Distillery to distill MEZQUILA was too expensive because the tequila would be bottled in Mexico and consequently subject to an additional \$3.50 tax per bottle.<sup>13</sup>

Undeterred, Applicants traveled to Guadalajara, Mexico and surrounding areas in September 2015 to meet with tequila distilleries.<sup>14</sup> Applicants met with Jose Cuervo distillery, Viva Mexico Distillery, and El Mexicano Distillery.<sup>15</sup> Applicants engaged in serious discussions with a representative of Viva Mexico Distillery, Sergio Vivicano, about producing a MEZQUILA branded product, but the parties did not reach an agreement.<sup>16</sup>

On December 3, 2015, Applicants met with representatives from Compañia Tequilera de Arandas (also referred to as Antigua Cruz) to discuss producing tequila for the MEZQUILA product.<sup>17</sup> Applicants eventually reached an arrangement with Compañia Tequilera de Arandas to distill tequila for Applicants' MEZQUILA brand.<sup>18</sup>

Alcohol production is a heavily regulated and complicatedly taxed industry.<sup>19</sup> Regulation of agave-based spirits, in particular, is even more complex because of territorial and traditional requirements regarding the source and method of production.<sup>20</sup> A single company usually does

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<sup>11</sup> **Ex. A**, Gabriel Dep. at 60:12–19 (“Q. How did you know Don Ramon to call and ask them to come? From -- they sell the Don Ramon Tequila. . . . Q. Okay. So why did you invite them over? A. Just to find out if it was doable on Mezquila.”).

<sup>12</sup> *Id.* at 60:21–25, 61:1–6.

<sup>13</sup> *Id.* at 61:10–19.

<sup>14</sup> *Id.* at 43:18–23, 47:12–22; **Ex. 3**.

<sup>15</sup> *Id.* at 47:12–22.

<sup>16</sup> *Id.* at 48:11–20, 49:15–18.

<sup>17</sup> *Id.* at 74:10–25; 27:3–6.

<sup>18</sup> *Id.* at 57:9–13.

<sup>19</sup> *Id.* at 80:1–2.

<sup>20</sup> *Id.* at 94:21–25, 95:1–15.



not make and distribute alcoholic spirits.<sup>21</sup> Typically, one company distills the liquid, another company bottles the product, and another company distributes the finished product.<sup>22</sup> The process is divided to reduce the overall tax burden on producing the tequila, thereby decreasing the production cost.<sup>23</sup>

Applicants' current production team includes: Distiller—Compañía Tequilera de Arandas; Bottler—Azar Distilling; and Distributor—A to Z Wholesale Wine & Spirits.<sup>24</sup> Applicants' contacts with each of the production team members, respectively, are Raul Romero, Trey Azar, and Amar Ali.<sup>25</sup> Applicants have oral agreements with the production team members regarding the MEZQUILA product.<sup>26</sup> Applicants' production team members have reached a preliminary agreement regarding production costs, material costs, and tax responsibility for producing MEZQUILA.<sup>27</sup>

Applicants plan to distribute a gold version and a silver version of MEZQUILA.<sup>28</sup> Gold tequila is aged in a barrel to give it a gold color, whereas silver tequila is not.<sup>29</sup> Applicants

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<sup>21</sup> **Ex. A**, Gabriel Dep. at 23:22–25.

<sup>22</sup> *Id.* at 23:18–25, 24:1 (“Legally, we have to have other companies make it and distribute it. Q. And what do you mean by that? A. That, you know, somebody has to make it, somebody has to distill the Tequila, somebody has to bottle it, and somebody has to distribute it and sell it.”).

<sup>23</sup> *Id.* at 24:12–16 (“And why doesn’t the distiller bottle it? A. Because of the tax – it’s the tax, ma’am. In other words, it’s lower tax if somebody else bottles it.”).

<sup>24</sup> *Id.* at 64:3–5, 29:1–3, 52:2–6.

<sup>25</sup> *Id.* at 72, 73.

<sup>26</sup> *Id.* at 41:8–10 (“Q. So the work you’re doing with A to Z right now, is that just based on oral agreements? A. Yes.”).

<sup>27</sup> **Ex. A**, Gabriel Dep. at 67:4–6 (Q. Do you know if they’ve come to agreements about production costs, material costs, taxes? A. As far as I know, yes.”); *see also* Opp. Mot. for Summ. J., Ex. C at Resp. 9 (“Applicants have reached agreements in principal with Compania Tequilera de Arandas, S.A. de C.V. to distill the goods, with Azar Distilling, LLC to bottle the goods, and with A to Z Wholesale Wine & Spirits, LLC to distribute the goods.”).

<sup>28</sup> **Ex. A**, Gabriel Dep. at 33:15–20.

<sup>29</sup> *Id.* at 33:21–25.

currently plan for MEZQUILA to be a tequila mixture with at least 51% being agave.<sup>30</sup> The mixture is developed by the distiller then sent to Applicants for approval.<sup>31</sup>

Applicants believe the key to establishing an economically successful tequila brand is success with “on premises” locations (restaurants and bars).<sup>32</sup> Applicants enlisted the help of Chuck Parrish, a businessmen experienced with on-premise sales, to help Applicants find a mixture that will appeal to “on premises” purchasers.<sup>33</sup> In 2015, Mr. Parrish accompanied Applicants to Guadalajara, Mexico to meet with distilleries.<sup>34</sup> Applicants intend for their MEZQUILA brand to sell for a relatively low price point and be a desirable yet affordable tequila.<sup>35</sup>

Around November 2015, Applicants requested their distributor, A to Z Wine & Spirits, prepare labels for MEZQUILA. A to Z proposed labels to Applicants, but Applicants disliked the initial version and requested design changes.<sup>36</sup> A to Z made Applicants’ requested changes and sent a revised version of the MEZQUILA labels.<sup>37</sup>

The initial goal for production of Applicants’ MEZQUILA product was November 2015.<sup>38</sup> A representative of Applicants’ distributor, Amar Ali, sent Applicants an initial production timeline anticipating production would start November 6, 2015.<sup>39</sup> Production of MEZQUILA has been delayed due to the legal complexity with producing agave-based spirits.

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<sup>30</sup> Ex. A, Gabriel Dep. at 34:2–3.

<sup>31</sup> *Id.* 36:1–5 (“A. They make the blend, and we just either approve it or don’t approve it.”).

<sup>32</sup> *Id.* at 45, 46.

<sup>33</sup> *Id.* at 44:24–25, 45:1–6.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 42:8–14 (“That you’re aiming for a relatively low Texas price point on this product; is that correct? A. It will be low price, yes.”).

<sup>36</sup> *Id.* at 53:13–14, 54, Ex. 4.

<sup>37</sup> *Id.* at 54, 55, Ex. 5.

<sup>38</sup> *Id.* at 25:10–15.

<sup>39</sup> *Id.* at 25:10–15, Ex. 2.

Applicants’ production team members have submitted the necessary documents and applications to gain the regulatory approval in the United States and Mexico.<sup>40</sup>

## **B. LEGAL AUTHORITY**

### *1. Legal Standard for Summary Judgment*

Disposition of a case on summary judgment is appropriate only when there are no issues of material fact.<sup>41</sup> The movant has the burden of establishing the absence of any genuine dispute of fact.<sup>42</sup> The Board must follow the well-established principle all “evidence must be viewed in a light favorable to the non-movant and all justifiable inferences are to be drawn in its favor.”<sup>43</sup>

### *2. Legal Standard for Bona Fide Intent*

Opposer has the initial burden of demonstrating Applicants’ lacked a bona fide intent to use the MEZQUILA mark on the identified goods.<sup>44</sup> If Opposer satisfies its initial burden, the burden shifts to Applicants to come forward with evidence showing their bona fide intent to use the MEZQUILA mark for alcoholic beverages.<sup>45</sup>

Bona fide intent must be “firm” but may be contingent on the outcome of events such as market research or product testing.<sup>46</sup> A determination of whether an applicant has a bona fide intention to use the mark in commerce is an objective determination based on all the circumstances.<sup>47</sup> Evidence of bona fide intent “is ‘objective’ in the sense that it is evidence in the form of real life facts and by the actions of the applicant.”<sup>48</sup> The question of intent to use is

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<sup>40</sup> Ex. A, Gabriel Dep. at 80:21–24.

<sup>41</sup> Fed. R. Civ. P. 56(a).

<sup>42</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 312, 323–24 (1986).

<sup>43</sup> See *Lloyd’s Food Products Inc. v. Eli’s Inc.*, 25 U.S.P.Q.2d 2027, 987 F.2d 766, 767 (Fed. Cir. 1993).

<sup>44</sup> See *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Boston Red Sox Baseball Club LP v. Sherman*, 88 U.S.P.Q.2d 1581, 1587 (T.T.A.B. 2008).

<sup>48</sup> *SmithKline Beecham Corp. v. Omnisource DDS, LLC*, 97 U.S.P.Q.2d 1300, 1305 (T.T.A.B. 2010).

factual in nature and generally unsuited for disposition on summary judgment.<sup>49</sup> The evidentiary bar for establishing bona fide intent to use a mark is “not high.”<sup>50</sup>

Documentary evidence of preparations to use a mark is not required to show bona fide intent to use a mark.<sup>51</sup> Instead, the Board focuses on “the entirety of the circumstances, as revealed by the evidence of record.”<sup>52</sup> The “entirety of the circumstances” includes assertions of fact and deposition testimony by the applicant.<sup>53</sup> An opposer can only use the absence of documentary evidence to establish a prima facie lack of bona fide intent *if* there are no other facts presented which adequately show a bona fide intent to use the mark.<sup>54</sup> In other words, insufficient documentary evidence is only indicative of a lack of bona fide intent “absent other facts . . . bearing upon [Applicants’] claimed bona fide intent to use its mark in commerce.”<sup>55</sup>

One way to establish bona fide intent to use a mark is showing applicant conducted one of the activities enumerated in 37 C.F.R. § 2.89 as sufficient good cause for an extension of time to file a statement of use.<sup>56</sup> These include: product research or development, market research, manufacturing activities, promotion activities, steps to acquire distributors, steps to obtain

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<sup>49</sup> *Copelands’ Enterprises, Inc. v. CNV, Inc.*, 20 U.S.P.Q.2d 1295, 945 F.2d 1563, 1567 (Fed. Cir. 1991).

<sup>50</sup> *M.Z. Berger & Co. v. Swatch AG*, 114 U.S.P.Q.2d 1892, 787 F.3d 1368, 1376 (Fed. Cir. 2015).

<sup>51</sup> *Mcdonald’s Corp.*, 91194117, 2012 WL 11828999, at \*6 (T.T.A.B. Dec. 18, 2012) (“[T]he lack of documentary evidence does not, by itself, establish conclusively that the applicant lacked the requisite intent.”); *Cervezas Cuauhtemoc Moctezuma Sa De Cv*, 91209633, 2014 WL 3976453, at \*3 (T.T.A.B. July 31, 2014) (“[T]he lack of documents evidencing a bona fide intent to use the mark may not be dispositive.”).

<sup>52</sup> *Lane Ltd. v. Jackson Int’l Trading Co.*, 33 USPQ2d 1351, 1355 (TTAB 1994).

<sup>53</sup> *Mcdonald’s Corp.*, 91194117, 2012 WL 11828999, at \*6 (T.T.A.B. Dec. 18, 2012).

<sup>54</sup> *See Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993) (denying summary judgment based on lack of bona fide intent).

<sup>55</sup> *The Saul Zaentz Comp. dba Tolkien Enters. v. Bumb*, 95 U.S.P.Q.2d 1723 (T.T.A.B. 2010).

<sup>56</sup> *M.Z. Berger & Co., Inc v. Swatch AG*, 114 U.S.P.Q.2d 1892, 787 F.3d 1368, 1379 n. 5 (Fed. Cir. 2015) (“Although [Rule 2.89(d)] relates to the required showing of ‘good cause’ for an extension to file a statement of use, i.e., at a time after the initial filing, such evidence may also indicate sources of objective evidence of an applicant’s bona fide intent to use the mark in commerce.”).

governmental approval, or other similar activities.<sup>57</sup> Any of these actions are probative of Applicants' bona fide intent to use the MEZQUILA mark.

### C. ARGUMENT

1. *Opposer incorrectly asserts Applicants produced no documentary evidence of their bona fide intent to use MEZQUILA.*

Opposer contends it has established a prima facie lack of bona fide intent because Applicants did not produce any documentary evidence of their bona fide intent to use MEZQUILA. Not true. Applicants produced probative documentary evidence created less than ten months from the filing date of its application. Applicants produced documentary evidence of their September 2015 trip to Guadalajara, Mexico to meet with tequila distilleries.<sup>58</sup> Applicants produced documentary evidence of an initial production time line dated November 2015 for their MEZQUILA product.<sup>59</sup> Applicants also produced documentary evidence, sent in November 2015, of the MEZQUILA bottle label.<sup>60</sup>

The Board does not require documentary evidence supporting bona fide intent pre-date

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<sup>57</sup> See 37 C.F.R. § 2.89(d).

<sup>58</sup> **Ex. A**, Gabriel Dep. at Ex. 3; 37 C.F.R. § 2.89(d) (documentary evidence of meetings with manufacturers is probative of bona fide intent to use).

<sup>59</sup> **Ex. A**, Gabriel Dep. at Ex. 2; *Lane Ltd.*, 33 U.S.P.Q.2d 1351 (T.T.A.B. 1994) ("Applicant's evidence pertaining to the formulation and implementation of its business plan and licensing program constitutes credible, objective corroboration of its statement in the application that it had a bona fide intention to use the mark in commerce on tobacco.")

<sup>60</sup> **Ex. A**, Gabriel Dep. at Ex. 4 and 5; *Research in Motion Ltd.*, 92 U.S.P.Q.2d 1926 (T.T.A.B. 2009) (finding no bona fide intent because the record was devoid of, among other things, documentary evidence of product labels); *Usa Pro Ip Ltd.*, 91214980, 2015 WL 4241153, at \*5 (T.T.A.B. June 16, 2015) (finding that evidence of product labels supported applicant's bona fide intent).

the filing date of the application.<sup>61</sup> For example, in *Lane Ltd. v. Jackson International Trading Co.*, the Board rejected an opposer's argument that documentary evidence created more than nine months after the filing date did not corroborate bona fide intent:

Furthermore, we find that this correspondence, which occurred in October-December 1992, was sufficiently contemporaneous to the application filing date in January 1992 to serve as corroboration of the applicant's declaration in the application of a bona fide intention to use the mark in commerce. ***Neither the statute nor the Board's decision in Commodore Electronics expressly imposes any specific requirements as to the contemporaneous of an applicant's documentary evidence*** corroborating its claim of bona fide intention.<sup>62</sup>

The Board has consistently considered documentary evidence created after the filing date of an application to sufficiently corroborate bona fide intent. At the very least, there is a fact issue whether Applicants' documentary evidence shows bona fide intent.

2. *Applicants' deposition testimony establishes meetings with distributors and manufacturers in furtherance of producing the MEZQUILA product.*

Even if Applicants' documentary evidence is insufficient, the absence of documentary evidence only establishes a *prima facie* lack of bona fide intent if there are no other facts showing bona fide intent.<sup>63</sup> For example, the Board recently explained:

Notwithstanding applicant's failure to produce any documentary evidence regarding his bona fide intent to use the ACE WATER mark in commerce, we find that is inappropriate to dispose of this proceeding by summary judgment . . . in view of applicant's asserted efforts over several years to produce drinking water, as revealed in his and [his associate's] declarations.<sup>64</sup>

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<sup>61</sup> *Lane Ltd.*, 33 U.S.P.Q.2d at 1355; *see also* *Honda Motor Co., Ltd.*, 90 U.S.P.Q.2d 1660 (T.T.A.B. 2009); *Swatch AG v. M.Z. Berger & Co.*, 108 U.S.P.Q.2d 1463, 1473 (TTAB 2013), *aff'd* *M.Z. Berger & Co. v. Swatch AG*, 114 U.S.P.Q.2d 1892, 787 F.3d 1368 (Fed. Cir. 2015) ("[T]he fact that these documents were created seven months after the trademark application was filed is not dispositive."); *Target Brands, Inc.*, 91204357, 2014 WL 11030988, at \*4 (T.T.A.B. Feb. 5, 2014) ("The Board disagrees with opposer's position that the documents dated May 6, 2011 and May 9, 2011 may not be considered in connection with a determination of whether applicant had bona fide intent to use the mark on April 26, 2011."); *Yoplait Marques v. Mona Eldib*, 91197220, 2015 WL 9900241, at \*3 (T.T.A.B. July 8, 2015).

<sup>62</sup> *Lane Ltd.* 33 U.S.P.Q.2d at 1355–56 (emphasis added).

<sup>63</sup> *See Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993).

<sup>64</sup> *Am. Council on Exercise*, 91203539, 2013 WL 11247280, at \*3–4 (T.T.A.B. July 30, 2013).

Evidence, such as discussions with manufacturers or licensees, substantiates a claim of bona fide intent to use a mark.<sup>65</sup>

Here, Applicants' testimony shows a sustained effort to research the tequila market and find the right production and distribution partners to put their MEZQUILA branded product on shelves. Applicants have met with four different tequila distilleries, including an international trip, in furtherance of producing a product under the MEZQUILA mark.<sup>66</sup> Applicants eventually selected and engaged a distillery to produce their product.<sup>67</sup> Applicants have engaged a bottler to bottle their product and a distributor to distribute the product using their MEZQUILA mark.<sup>68</sup> Applicants, with the help of its production team members, have sought the necessary government approval in both Mexico and the United States.<sup>69</sup> These actions show a bona fide intent to use the MEZQUILA mark in connection with the identified goods.

3. *Opposer's argument that Applicants lacked bona fide intent "at the time" the application was filed is illogical.*

Opposer argues that even if Applicants now have a bona fide intent to use the MEZQUILA mark, they did not have a bona fide intent at the time the application was filed.<sup>70</sup> Opposer, however, ignores Mr. Gabriel's uncontroverted testimony that Applicants began planning to distribute product using the MEZQUILA mark two months before filing the MEZQUILA application.<sup>71</sup> Opposer's argument also disregards Applicants' testimony they met with representative of Don Ramon Distillery in February 2015 to discuss sourcing product for

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<sup>65</sup> 37 C.F.R. § 2.89(d).

<sup>66</sup> See **Ex. A**, Gabriel Dep. at 59, 62, 74.

<sup>67</sup> *Id.* at 66:4–11.

<sup>68</sup> *Id.* at 29:12–15.

<sup>69</sup> *Id.* at 71:8–9, 80:22–24, 81:1–7.

<sup>70</sup> Opp. Mot. for Summ. J. at 4, 12.

<sup>71</sup> **Ex. A**, Gabriel Dep. at 21:5–10 (“Q. Okay. And when did you next start thinking about doing the Mezquila product? A. When we -- about two months before we filed a trademark.”).

Applicants' MEZQUILA brand less than a month after the January 29, 2015 filing date.<sup>72</sup> The Board, which on summary judgment must make all justifiable inferences in Applicants' favor, can reasonably infer the meeting between Applicants and Don Ramon's representatives just days after filing the MEZQUILA application is probative of Applicant's bona fide intent when they filed the application. Opposer's argument that Applicants lacked bona fide intent at the time they filed the MEZQUILA application based on the time elapsed between filing on January 29, 2015, and meeting with the first potential distillery in February 2015 is illogical.

4. *Opposer incorrectly discredits Applicants' experience and capability.*

An applicant's "ability, capacity, resources, and knowledge with respect to producing or providing the goods and services claimed in its application is an important consideration in a determination of [applicant's] bona fide intent to use a mark."<sup>73</sup> Even despite a lack of documentary evidence, "experience with respect to the goods identified in [applicant's] application [is] sufficient to raise a genuine dispute as to whether Applicant had a bona fide intent."<sup>74</sup>

In its motion, Opposer creates a false distinction between Applicants' experience with retail sales of liquor and experience probative to Applicants' bona fide intent to produce MEZQUILA branded agave-based sprints. Applicants have a combined ninety-three years' experience selling alcoholic beverages.<sup>75</sup> This experience imparts knowledge onto Applicants regarding how to develop a successful liquor brand. Applicants' experience and reputation in the liquor business is reflected in their ability to secure audiences with tequila distilleries. For

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<sup>72</sup> 37 C.F.R. § 2.89(d) (listing meetings with research, meetings with distributors and similar activities as evidence of an applicant's bona fide intent).

<sup>73</sup> *Standard Homeopathic Co.*, 91209168, 2015 WL 3430006, at \*6 (T.T.A.B. May 4, 2015) (citing *Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.*, 108 U.S.P.Q.2d 1463, 1477 (T.T.A.B. 2013)).

<sup>74</sup> *Carl Walther GmbH & Umarex Sportwaffen GmbH & Co., Kg*, 91215976, 2015 WL 4451368, at \*4 (T.T.A.B. June 22, 2015).

<sup>75</sup> **Ex. A**, Gabriel Dep. at 11:3–7, 17.



example, Applicants' history and respect in the industry enabled them to tour the El Mexicano Distillery, meet with the owners of Don Ramon Distillery to discuss business, and be hosted as a guest at the Jose Cuervo Distillery.<sup>76</sup> Applicants' experience is the reason Applicants are strategically picking an agave blend that will appeal to "on premises" locations such as bars and restaurants.<sup>77</sup> Applicants' experience and knowledge is an asset to the MEZQUILA brand and further shows their bona fide intent to use the mark.

Opposer also argues Applicants are not sufficiently involved with the production process for their experience and reputation to be probative of their bona fide intent.<sup>78</sup> Opposer, however, provides no support for the position that Applicants' use of outside companies for manufacturing and distribution is evidence of a lack of bona fide intent. Applicants' most invaluable resource, respect in the alcohol beverage industry, is the driving force behind the MEZQUILA product and substantiates Applicants' bona fide intent to use the MEZQUILA mark. Opposer's purported distinction between experience with retail liquor sales and production of alcoholic spirits, if anything, creates a fact issue regarding Applicants' ability and corresponding bona fide intent to produce alcoholic beverages under the MEZQUILA mark.

5. *Opposer cites unpersuasive case law.*

Opposer incorrectly asserts *Diageo N. Am., Inc. v. Captain Russell* is factually equivalent to Applicants' application for the MEZQUILA mark.<sup>79</sup> In *Captain Russell*, the applicant provided no deposition testimony corroborating its intent to use the Captain Russel mark.<sup>80</sup> In response to interrogatories the applicant stated "I do not plan to use [the] Mark."<sup>81</sup> The applicant

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<sup>76</sup> **Ex. A**, Gabriel Dep. at 21:22–25, 22:1, 49:3–6.

<sup>77</sup> *Id.* at 45:20–22.

<sup>78</sup> Opp. Mot. for Summ. J. at 11.

also admitted it lacked money to develop the product and presented no evidence of collaboration with other companies.<sup>82</sup>

Here, Applicants have produced documentary evidence showing their collaboration with other companies to produce spirits using the MEZQUILA mark. Applicants have provided deposition testimony further evidencing their progress towards production. Finally, Applicants' evidence shows they, unlike the *Captain Russell* applicant, have the necessary contacts and reputation in the alcoholic beverage industry to produce their product.

Opposer relies on *Cervezas Cuauhtemoc Moctezuma SA de CV v. Weaver*, which is also factually distinguishable. In *Weaver*, the applicant did not even give deposition testimony.<sup>83</sup> The applicant asserted he had one document, a trademark search report, but did not attach the document to his summary judgment response. There was "nothing in the record to explain how applicant has the capacity to produce the goods set forth in the application."<sup>84</sup> Here, however, Mr. Gabriel explained in his deposition how Applicants have negotiated with distilleries, bottlers, and distributors to produce tequila using the MEZQUILA mark.

Opposer also relies on *Spirits Int'l, B.V. (Formerly Spirits Int'l N.V.)* where the "applicant submitted no evidence whatsoever, nor did it file a brief" in support of its bona fide intent to use the mark.<sup>85</sup> In contrast, the current record and Applicants' brief direct the Board to deposition testimony and documentary evidence substantiating Applicants' bona fide intent.

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<sup>79</sup> Opp. Mot. for Summ. J. at 12.

<sup>80</sup> *Diageo North America, Inc. v. Captain Russell Corp.*, 91203745, 2013 WL 5407296, at \*4 (T.T.A.B. June 12, 2013) ("[T]here is no testimony presently of record in connection with the motion for summary judgment that serves to corroborate applicant's assertion regarding interactions with third parties").

<sup>81</sup> *Id.* at \*5.

<sup>82</sup> *Id.*

<sup>83</sup> *Cervezas Cuauhtemoc Moctezuma SA de CV v. Weaver*, 91209633, 2014 WL 3976453, at \*4 (T.T.A.B. July 31, 2014) ("I will not appear for the deposition on Tuesday, Feb. 4th. I have no additional evidence to provide.").

<sup>84</sup> *Id.*

<sup>85</sup> *Spirits Int'l, B.V. (Formerly Spirits Int'l N.V.)*, 99 U.S.P.Q.2d 1545 (T.T.A.B. 2011).

#### **D. CONCLUSION**

The evidence of record shows, at the minimum, a genuine fact issue regarding Applicants' bona fide intent to use MEZQUILA. Applicants' actions—meeting with distilleries, meeting with bottlers, meeting with distributors, reviewing labels, tastings, traveling to Mexico, discussing production costs, discussing liquor taxes, and applying for regulatory approval—are all probative of a bona fide intent to use MEZQUILA.

Opposer ignores the substance of Mr. Gabriel's testimony and latches onto an out-of-context quote in which Mr. Gabriel refers to registering MEZQUILA "in case" he decided to produce his own tequila. Case law is clear, however, that bona fide intent to use a mark can be contingent upon successful research and development. Applicants' testimony shows they were meeting with distilleries concurrently with filing the MEZQUILA application and have continued to work towards producing Applicants' MEZQUILA branded product. Moreover, Applicants' have produced documentary evidence corroborating their deposition testimony regarding preparations for producing tequila under the MEZQUILA mark. Opposer's motion should be denied.

#### **E. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Applicants respectfully pray the Board deny Opposer's Motion for Summary Judgment and grant Applicants further relief, in law or in equity, as the Board deems just and proper under the circumstances.

Respectfully submitted,

Date: July 8, 2016

By: /s/ Miguel Villarreal, Jr.

Miguel Villarreal, Jr.  
Texas State Bar No. 24042095  
GUNN, LEE, & CAVE, P.C.  
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**ATTORNEYS FOR APPLICANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the forgoing Response in Opposition to Opposer's Motion for Summary Judgment has been served on counsel for Opposer on July 8, 2016, via first class mail and/or email:

John L. Haller  
Susan Boensch Meyer  
Gordon & Rees, LLP  
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**ATTORNEYS FOR OPPOSER**

/s/ Miguel Villarreal, Jr.  
Miguel Villarreal, Jr.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Matter of U.S. Application Serial No. 86/518,323  
For the Trademark: MEZQUILA  
Filed: January 29, 2015  
Date of Publication: June 23, 2015

LOS SANTOS, LLC, a California Limited  
Liability Company

Opposer,

v.

ROSALIE GABRIEL, an individual citizen of the  
United States, and JOHNNY D. GABRIEL, an  
individual citizen of the United States

Applicant.

Opposition No. 91223574

**DECLARATION OF MIGUEL VILLARREAL IN SUPPORT OF  
APPLICANTS' RESPONSE IN OPPOSITION TO  
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

1. I am an attorney at law, licensed to practice in the state of Texas and am a member in good standing of the State Bar of Texas. I am also licensed to practice before the United States Patent and Trademark Office ("PTO").

2. I am an attorney for Applicants Rosalie and Johnny Gabriel and have firsthand knowledge of the matters stated herein. If called as a witness, I could and would competently testify to the facts set forth below. I make this declaration in support of Applicants' Response in Opposition to Opposer's Motion for Summary Judgment.

3. **Exhibit A** to Applicants' Response is a true and correct copy of excerpts and exhibits from Applicant Johnny Gabriel's deposition taken March 3, 2015.

I declare, under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

DATE: July 8, 2016

Respectfully submitted,

/s/ Miguel Villarreal, Jr.

Miguel Villarreal, Jr.  
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**ATTORNEYS FOR APPLICANTS**

# EXHIBIT A

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1	ORAL DEPOSITION OF JOHNNY GABRIEL		
2	March 3, 2016		
3			
4	ORAL DEPOSITION OF JOHNNY GABRIEL, produced as a		
5	witness at the instance of the Opposer and duly sworn,		
6	was taken in the above-styled and numbered cause on the		
7	3rd day of March, 2016, from 8:46 a.m. to 11:15 a.m.,		
8	before Tina C. Fuller, Certified Shorthand Reporter in		
9	and for the State of Texas, reported by computerized		
10	stenotype machine at the offices of DepoTexas, 100 NE		
11	Loop 410, Suite 540, San Antonio, Texas, pursuant to the		
12	Federal Rules of Civil Procedure and the provisions		
13	stated on the record or attached hereto.		
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25			
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1	A P P E A R A N C E S	1	(The reading of Federal Rule 30 (b) (5) (A)
2		2	into the record was waived by all parties present.)
3	FOR OPPOSER:	3	JOHNNY GABRIEL,
4	MS. SUSAN B. MEYER	4	having been first duly sworn, testified as follows:
5	Gordon & Rees, LLP	5	EXAMINATION
6	101 West Broadway, Suite 2000	6	BY MS. MEYER:
7	San Diego, California 92101	7	Q. Good morning, Mr. Gabriel. I'm Susan Meyer,
8	Telephone: 619-696-6700	8	and I'm the attorney for Mas Cantinas in the trademark
9	smeyer@gordonrees.com	9	trial and appeal matter, and I'm here to take your
10		10	deposition to ask you questions about the trademark
11	FOR APPLICANT:	11	application that's the subject of this Trademark Trial
12	MR. MICHAEL D. PAUL	12	and Appeal Board proceeding. I'm going to talk to you a
13	MR. BRANDON COOK	13	little bit about what's going to happen this morning.
14	Gunn Lee & Cave, P.C.	14	Have you been deposed before?
15	300 Convent, Suite 1080	15	A. Yes.
16	San Antonio, Texas 78205	16	Q. You have. How many times?
17	Telephone: 210-886-9500	17	A. Can't remember. Five, six, seven.
18	mpaul@gunn-lee.com	18	Q. Okay. Well, we'll come back to that in a
19		19	minute.
20		20	Do you understand that you're under oath
21		21	as if you were in a regular courthouse?
22		22	A. Yes.
23		23	Q. Can you agree to be sure to give verbal answers
24		24	instead of nodding your head or other non-verbal cues
25		25	today?



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<p>1 Q. What type of engineering?</p> <p>2 <b>A. Structural engineering.</b></p> <p>3 Q. And did you go to any other type of school or</p> <p>4 training after high school?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Were you in the military?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Let's talk a little bit about your work</p> <p>9 background. What was your first job after you finished</p> <p>10 college?</p> <p>11 <b>A. Post office.</b></p> <p>12 Q. And what did you do at the post office?</p> <p>13 <b>A. Mail clerk.</b></p> <p>14 Q. And how long -- how long did you work there?</p> <p>15 <b>A. About four years.</b></p> <p>16 Q. And then what did you do?</p> <p>17 <b>A. Opened Discount Liquors.</b></p> <p>18 Q. Is Discount Liquors your business?</p> <p>19 <b>A. Was in '59. We opened in 1959.</b></p> <p>20 Q. And was that a retail business?</p> <p>21 <b>A. Yeah, retail package store.</b></p> <p>22 Q. And where was that located?</p> <p>23 <b>A. At 424 North Zarzamora.</b></p> <p>24 Q. And how long did you run Discount Liquors?</p> <p>25 <b>A. Been running continuously up to 19-- -- I think</b></p>	<p>1 same location?</p> <p>2 <b>A. No, no.</b></p> <p>3 Q. Okay. So other than Discount Liquors, have you</p> <p>4 had any other jobs?</p> <p>5 <b>A. No.</b></p> <p>6 Q. So you've been doing the same thing since 1959?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Okay. Now, in 1982, you said you started SA</p> <p>9 Discount Liquor. Is that a corporation?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Okay. And is it a Texas corporation?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And who owns that company?</p> <p>14 <b>A. What is that, ma'am?</b></p> <p>15 Q. Who owns that company?</p> <p>16 <b>A. You mean then or now?</b></p> <p>17 Q. How about then?</p> <p>18 <b>A. Then it was my wife and I, Rosalie Gabriel,</b></p> <p>19 <b>Johnny Gabriel.</b></p> <p>20 Q. And did that ownership change over the years?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. How so?</p> <p>23 <b>A. The children are -- now own the company. I</b></p> <p>24 <b>only have 6 percent.</b></p> <p>25 Q. And who are your children?</p>
Page 10	Page 12
<p>1 <b>1982.</b></p> <p>2 Q. And what happened in 1982?</p> <p>3 <b>A. The structure was changed to SA Discount</b></p> <p>4 <b>Liquor.</b></p> <p>5 Q. Oh, the corporate structure was changed?</p> <p>6 <b>A. I don't know if I had a corporate structure up</b></p> <p>7 <b>until -- I did not have a corporate structure up until</b></p> <p>8 <b>'82.</b></p> <p>9 Q. Okay. Okay. Is Discount Liquor still in</p> <p>10 business?</p> <p>11 <b>A. No, ma'am.</b></p> <p>12 Q. Okay. What -- when did it go out of business?</p> <p>13 <b>A. In '82.</b></p> <p>14 Q. Oh, it did. Okay. Okay. Did you continue</p> <p>15 selling packaged liquor after 1982?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Okay. And that was under SA Discount Liquor?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Okay. So is the -- the signage at the store,</p> <p>20 what does it read?</p> <p>21 <b>A. Repeat again.</b></p> <p>22 Q. The sign at the store, is it SA Discount</p> <p>23 Liquor?</p> <p>24 <b>A. No, just Discount Liquor.</b></p> <p>25 Q. Okay. Are you -- is that business still in the</p>	<p>1 <b>A. Ronnie Gabriel, Cindy Gabriel, Rosalin Gabriel</b></p> <p>2 <b>and Jennifer Gabriel, and that's about it.</b></p> <p>3 Q. Okay. So the -- the four -- or the five</p> <p>4 children --</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. -- are the primary shareholders?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. Okay. Do you still work for SA Discount</p> <p>9 Liquor?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Okay. When did -- when did this change happen,</p> <p>12 that the children became owners?</p> <p>13 <b>A. I think about 2004.</b></p> <p>14 Q. So in 2004, did you -- is that when you stopped</p> <p>15 working for SA Discount Liquors?</p> <p>16 <b>A. Basically, yes.</b></p> <p>17 Q. What do you mean by "basically"?</p> <p>18 <b>A. Well, I mean, I still have some ownership.</b></p> <p>19 Q. Okay. So do you go into the office?</p> <p>20 <b>A. Once in a while.</b></p> <p>21 Q. And what do you do if you go into the office?</p> <p>22 <b>A. To see what's going on.</b></p> <p>23 Q. Okay. So between 1959 and 2004, approximately,</p> <p>24 is it fair to say that you were -- you were heavily</p> <p>25 involved in the retail liquor business?</p>

Page 13	Page 15
<p>1       <b>A. Yes.</b></p> <p>2       Q. Okay. So tell me about this business. What --</p> <p>3 did you have one location or multiple locations through</p> <p>4 the years?</p> <p>5       <b>A. Multiple locations.</b></p> <p>6       Q. Okay. How many locations?</p> <p>7       <b>A. Now or then?</b></p> <p>8       Q. What was the most number you had?</p> <p>9       <b>A. I would say 50.</b></p> <p>10      Q. And where were those located?</p> <p>11      <b>A. All over town, surrounding counties.</b></p> <p>12      Q. So in the San Antonio area; is that fair?</p> <p>13      <b>A. Mostly Bexar County area, yes, San Antonio.</b></p> <p>14      Q. Any out of this area?</p> <p>15      <b>A. Yes.</b></p> <p>16      Q. Okay. Where were those located?</p> <p>17      <b>A. In Kendall County, Comal County.</b></p> <p>18      Q. How many locations are there now?</p> <p>19      <b>A. About 48.</b></p> <p>20      Q. So were these -- or are these typical liquor</p> <p>21 stores, wine, beer?</p> <p>22      <b>A. They're called package stores.</b></p> <p>23      Q. Okay. Is that what they're called here in</p> <p>24 Texas?</p> <p>25      <b>A. Yeah, correct.</b></p>	<p>1 you're not able to give your best answers, that you will</p> <p>2 let me know?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q. Okay. Okay. And if you need more breaks, feel</p> <p>5 free to also let me know.</p> <p>6       <b>A. I thank you.</b></p> <p>7       Q. Okay. All right. Good. So we were talking</p> <p>8 about SA Discount Liquor before we took a break. Other</p> <p>9 than SA Discount Liquor, starting in 1959, did you work</p> <p>10 for any other businesses?</p> <p>11      <b>A. No.</b></p> <p>12      Q. Okay. Did you own any other businesses?</p> <p>13      <b>A. Yes.</b></p> <p>14      Q. Okay. What were those businesses?</p> <p>15      <b>A. I invested with a high school -- you know, a</b></p> <p>16 <b>high school friend, in SA Transmission Company.</b></p> <p>17      Q. And what was the name of that transmission</p> <p>18 company?</p> <p>19      <b>A. San Antonio Transmission.</b></p> <p>20      Q. And how long were you an investor in</p> <p>21 San Antonio Transmission?</p> <p>22      <b>A. About four years.</b></p> <p>23      Q. And when did that end?</p> <p>24      <b>A. 1975.</b></p> <p>25      Q. And were you an owner of any other businesses?</p>
Page 14	Page 16
<p>1       Q. Package store. They don't have a bar</p> <p>2 associated with them, is that -- is that the difference?</p> <p>3       <b>A. Repeat again.</b></p> <p>4       Q. There's no bar associated with them. They're</p> <p>5 just go in, purchase retail liquor and leave?</p> <p>6       <b>A. Correct.</b></p> <p>7       Q. Okay. And what type of licensing do you have</p> <p>8 to get to sell liquor?</p> <p>9       <b>A. The package store.</b></p> <p>10      Q. Okay. And that's a Texas license?</p> <p>11      <b>A. Yes.</b></p> <p>12      Q. Okay.</p> <p>13      <b>A. You have to excuse me just a minute.</b></p> <p>14                (Recess from 8:58 a.m. to 9:01 a.m.)</p> <p>15      Q. (By Ms. Meyer) Mr. Gabriel, you just told me</p> <p>16 that you've had some dental implants done --</p> <p>17      <b>A. Correct.</b></p> <p>18      Q. -- recently.</p> <p>19      <b>A. A few.</b></p> <p>20      Q. Okay. And so that was just two days ago?</p> <p>21      <b>A. Correct.</b></p> <p>22      Q. Okay. And are you not feeling your best today?</p> <p>23      <b>A. I'm just -- I feel just a little bit</b></p> <p>24 <b>light-headed, that's all.</b></p> <p>25      Q. Okay. Can we agree that if you're feeling like</p>	<p>1       <b>A. Not that I can remember.</b></p> <p>2       Q. So what were -- what was your title at SA</p> <p>3 Discount Liquors?</p> <p>4       <b>A. I'm trying to think. President or CEO, so one</b></p> <p>5 <b>of the -- CEO, probably.</b></p> <p>6       Q. Okay. And was that always your title?</p> <p>7       <b>A. I think, yes.</b></p> <p>8       Q. Until 2004; is that correct?</p> <p>9       <b>A. Correct.</b></p> <p>10      Q. And who's president right now?</p> <p>11      <b>A. Of the current operation?</b></p> <p>12      Q. Yes.</p> <p>13      <b>A. Cindy Gabriel.</b></p> <p>14      Q. And that's your daughter?</p> <p>15      <b>A. Yes.</b></p> <p>16      Q. In some of the documents, I see a reference to</p> <p>17 Gabriel Investments; is that right?</p> <p>18      <b>A. Yes, Gabriel Investments.</b></p> <p>19      Q. Is that a company that you're affiliated with?</p> <p>20      <b>A. That is the ownership of SA Discount or current</b></p> <p>21 <b>operation.</b></p> <p>22      Q. So Gabriel Investments, is that a corporation?</p> <p>23      <b>A. I really don't know if it's a corporation or</b></p> <p>24 <b>not.</b></p> <p>25      Q. Okay. But Gabriel Investments owns SA Discount</p>

Page 17	Page 19
<p>1 Liquors?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. Did your wife, Rosalie, also work for SA</p> <p>4 Discount Liquors?</p> <p>5 <b>A. Up until 2004.</b></p> <p>6 Q. Okay. And what was her title at SA Discount</p> <p>7 Liquors?</p> <p>8 <b>A. Either president or vice-president.</b></p> <p>9 Q. And did she come into work every day and work</p> <p>10 at the company full-time?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And she also stepped away from SA Discount</p> <p>13 Liquors in 2004?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. In 2004, did you consider that a</p> <p>16 retirement?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. How long have you and Rosalie been married?</p> <p>19 <b>A. 1980, so that would be, what, 20, 36 years.</b></p> <p>20 Q. And have you always worked together?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you have any other businesses currently,</p> <p>23 other than the Mezquila matter that we're talking about</p> <p>24 right now?</p> <p>25 <b>A. Do I have any what?</b></p>	<p>1 Q. Do you remember what made you think of -- think</p> <p>2 of this?</p> <p>3 <b>A. Just happened to think of it. That's all.</b></p> <p>4 Q. Did you write it down or -- how did you</p> <p>5 remember it between 2004 and, say, 2015?</p> <p>6 <b>A. Just -- I just remembered. That's all.</b></p> <p>7 Q. Did you talk to anybody about your idea back in</p> <p>8 2004?</p> <p>9 <b>A. Yes. We met with different distillers in</b></p> <p>10 <b>Oaxaca.</b></p> <p>11 Q. In 2004?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. And did you mention to them the name</p> <p>14 "Mezquila"?</p> <p>15 <b>A. I think so.</b></p> <p>16 Q. And who did you meet with in 2004?</p> <p>17 <b>A. Oh, I don't remember.</b></p> <p>18 Q. Were these distillers that you knew previously?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Had you traveled there before to meet with</p> <p>21 Tequila --</p> <p>22 <b>A. No.</b></p> <p>23 Q. -- distillers? Okay. Do you remember how long</p> <p>24 you were there?</p> <p>25 <b>A. Three days.</b></p>
Page 18	Page 20
<p>1 Q. Any other businesses that you're working with,</p> <p>2 working for currently?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Okay. Let's talk a little bit about Mezquila.</p> <p>5 Am I pronouncing that correctly? Is that how you intend</p> <p>6 to pronounce it?</p> <p>7 <b>A. Mezquila.</b></p> <p>8 Q. Okay. Good. Who came up with the idea for</p> <p>9 this product?</p> <p>10 <b>A. I did.</b></p> <p>11 Q. And how did you come up with the idea?</p> <p>12 <b>A. Basically there was a Tequila shortage in '04,</b></p> <p>13 <b>so we were -- went to Oaxaca and tried to buy a</b></p> <p>14 <b>Tequila-type product, and that's when I thought of</b></p> <p>15 <b>Tequila and the Mezquila.</b></p> <p>16 Q. So in 2004, there was a shortage of Tequila?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. Do you know why?</p> <p>19 <b>A. Agave, there wasn't enough agave planted.</b></p> <p>20 Q. And so you went to Mexico to see if you could</p> <p>21 source additional Tequila; is that correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Okay. And how did that lead to you coming up</p> <p>24 with this Mezquila product?</p> <p>25 <b>A. I wanted a brand name that could work.</b></p>	<p>1 Q. And when you left, what happened next on this</p> <p>2 idea?</p> <p>3 <b>A. Nothing.</b></p> <p>4 Q. And why not?</p> <p>5 <b>A. I couldn't find a producer to be able to make</b></p> <p>6 <b>it work.</b></p> <p>7 Q. Do you remember the reason?</p> <p>8 <b>A. Price.</b></p> <p>9 Q. And what do you mean by "price"?</p> <p>10 <b>A. In other words, the cost of the goods.</b></p> <p>11 Q. Was it too high?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Too -- was it too high for the Texas price</p> <p>14 point you were thinking of selling it at?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And what -- if you remember, what Texas price</p> <p>17 point were you thinking of in 2004?</p> <p>18 <b>A. It was under \$7.</b></p> <p>19 Q. Retail price?</p> <p>20 <b>A. Wholesale.</b></p> <p>21 Q. And was the price too high then?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Because of the shortage?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Do you recall about how much it was then?</p>

Page 21	Page 23
<p>1       <b>A. Cost to me?</b></p> <p>2       Q. Yes.</p> <p>3       <b>A. I don't remember, Miss. I know it was too</b></p> <p>4 <b>high.</b></p> <p>5       Q. Okay. And when did you next start thinking</p> <p>6 about doing the Mezquila product?</p> <p>7       <b>A. When we -- about two months before we filed a</b></p> <p>8 <b>trademark in January of '14, I think. '15 -- I'm not --</b></p> <p>9 <b>I don't remember. '14 or '15. No, '15. We filed it in</b></p> <p>10 <b>'15.</b></p> <p>11       Q. Okay. And why did this come back up again 11</p> <p>12 years later?</p> <p>13       <b>A. I thought that it would be a good idea to have</b></p> <p>14 <b>it trademarked as a brand name in case I wanted to bring</b></p> <p>15 <b>in my own Tequila.</b></p> <p>16       Q. So you filed the trademark application, and</p> <p>17 then what else did you do to start working toward</p> <p>18 producing the product?</p> <p>19       <b>A. Contacting a distiller in February of '15.</b></p> <p>20       Q. And do you remember what distiller you</p> <p>21 contacted?</p> <p>22       <b>A. The Don Ramon people.</b></p> <p>23       Q. And had you known them before?</p> <p>24       <b>A. Yes.</b></p> <p>25       Q. And how did you know them before?</p>	<p>1 Gabrielspirits.com. Is that another company?</p> <p>2       <b>A. Repeat again.</b></p> <p>3       Q. Gabrielspirits.com.</p> <p>4       <b>A. No, ma'am. That's just an e-mail.</b></p> <p>5       Q. Okay. So is that related to Gabriel</p> <p>6 Investments?</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. Okay. Okay. So it's not a separate company?</p> <p>9       <b>A. No.</b></p> <p>10       Q. Okay. Now, the -- the Mezquila product, I</p> <p>11 noticed on the trademark application, you and Rosalie</p> <p>12 own -- own the application personally, and it's not owned</p> <p>13 by a company; is that correct?</p> <p>14       <b>A. Correct.</b></p> <p>15       Q. And why did you do it that way?</p> <p>16       <b>A. We just thought it would fit, you know, what we</b></p> <p>17 <b>do for an investment for the future.</b></p> <p>18       Q. Do you intend on having a corporation or some</p> <p>19 other corporate entity produce the product and sell the</p> <p>20 product, or are you going to do it personally?</p> <p>21       <b>A. Legally, we have to have other companies make</b></p> <p>22 <b>it and distribute it.</b></p> <p>23       Q. And what do you mean by that?</p> <p>24       <b>A. That, you know, somebody has to make it,</b></p> <p>25 <b>somebody has to distill the Tequila, somebody has to</b></p>
Page 22	Page 24
<p>1       <b>A. Selling Don Ramon in the area.</b></p> <p>2       Q. Okay. Is Don Ramon a brand?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q. A brand of Tequila, I assume?</p> <p>5       <b>A. Yes.</b></p> <p>6       Q. Okay. We'll talk about them here in a</p> <p>7 little -- a little while. The Mezquila product, is it</p> <p>8 the intention to sell it as a larger family of products,</p> <p>9 or is it going to be a stand-alone product?</p> <p>10       <b>A. It's just a brand name.</b></p> <p>11       Q. Let's talk a little bit about the -- about the</p> <p>12 word "Mezquila." Does it have any special meaning?</p> <p>13       <b>A. No.</b></p> <p>14       Q. The -- the "quila" part, I guess, references</p> <p>15 "Tequila." What does M-E-Z reference or mean?</p> <p>16               MR. PAUL: I'm going to object to that</p> <p>17 question, but -- form. Go ahead and answer.</p> <p>18       <b>A. I just -- I don't know. I just like the brand</b></p> <p>19 <b>name. That's all.</b></p> <p>20       Q. Did you consider any other names?</p> <p>21       <b>A. My wife's name, but, no. No. We just -- I</b></p> <p>22 <b>just liked the name, the brand name, and I thought it was</b></p> <p>23 <b>catchy.</b></p> <p>24       Q. On some e-mails that I've seen on documents</p> <p>25 you've produced, I see the domain name</p>	<p>1 <b>bottle it, and somebody has to distribute it and sell it.</b></p> <p>2       Q. You going to have to forgive me because I don't</p> <p>3 know much about the liquor business, so I may be asking</p> <p>4 really basic questions here. I understand someone has to</p> <p>5 make the Tequila. Why doesn't that same company bottle</p> <p>6 the Tequila? How is that different?</p> <p>7       <b>A. It -- you talking about the company that</b></p> <p>8 <b>distills the Tequila?</b></p> <p>9       Q. Uh-huh.</p> <p>10       <b>A. Yeah, that's one way. They can distill it or</b></p> <p>11 <b>somebody else can bottle it.</b></p> <p>12       Q. And why doesn't the distiller bottle it?</p> <p>13       <b>A. Because of the tax -- it's the tax, ma'am. In</b></p> <p>14 <b>other words, it's lower tax if somebody else bottles it.</b></p> <p>15       Q. Do you know why?</p> <p>16       <b>A. Taxes.</b></p> <p>17       Q. Well, I'm just as confused of taxes -- sales</p> <p>18 taxes, is that what you're talking about or -- so there's</p> <p>19 Federal taxes on bottling?</p> <p>20       <b>A. Federal taxes on the liquor.</b></p> <p>21       Q. Okay. It ends up being less expensive if</p> <p>22 someone distills it and another -- someone bottles it?</p> <p>23       <b>A. In the United States.</b></p> <p>24       Q. Okay. And do you have to have a bottler here,</p> <p>25 or can it be bottled in, say, Mexico?</p>

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<p>1       <b>A. It can be bottled in Mexico or bottled here.</b></p> <p>2       Q. Okay. And we'll talk in a little bit about</p> <p>3 your plan on that. Let's take a look at what we'll label</p> <p>4 Exhibit 2.</p> <p>5               (Exhibit Number 2 marked)</p> <p>6       Q. I'm going to hand you what's been labeled</p> <p>7 Exhibit 2. Do you recognize this document?</p> <p>8       <b>A. Yes.</b></p> <p>9       Q. And what is it?</p> <p>10       <b>A. Amar sent me a date for production and</b></p> <p>11 <b>distribution -- or production, mostly. He sent me a</b></p> <p>12 <b>timeline for production.</b></p> <p>13       Q. Okay. And when did he send this?</p> <p>14       <b>A. Whatever date it has on there. November.</b></p> <p>15 <b>November 6, '15.</b></p> <p>16       Q. Okay. Let's talk a little bit about Amar. Who</p> <p>17 is Amar?</p> <p>18       <b>A. He's the owner of the distribution in Texas.</b></p> <p>19       Q. And how do you know him?</p> <p>20       <b>A. Through -- through calls that he makes to the</b></p> <p>21 <b>company, to Discount Liquor, Gabriel Liquors.</b></p> <p>22       Q. And does he distribute products that Discount</p> <p>23 Liquors then retails?</p> <p>24       <b>A. Yeah.</b></p> <p>25       Q. And how long have you known Amar?</p>	<p>1       <b>A. Yes.</b></p> <p>2       Q. And what -- what had you requested from him?</p> <p>3       <b>A. Trying to work out with the company that he</b></p> <p>4 <b>distributes, Antigua Cruz, whether they could produce it</b></p> <p>5 <b>or make it or were they -- was it doable.</b></p> <p>6       Q. So the company that makes Antigua Cruz, was the</p> <p>7 plan that they would also make Mezquila?</p> <p>8       <b>A. Yes.</b></p> <p>9       Q. And is that still the plan?</p> <p>10       <b>A. Is that what?</b></p> <p>11       Q. Is that still the plan today?</p> <p>12       <b>A. Not the same, no.</b></p> <p>13       Q. Okay. Okay. So this proposal was related to a</p> <p>14 different company producing the product than what you're</p> <p>15 considering today, in 2016?</p> <p>16       <b>A. Yes.</b></p> <p>17       Q. Okay. Have you received anything similar to</p> <p>18 this?</p> <p>19       <b>A. Do I?</b></p> <p>20       Q. Anything -- have you received anything similar</p> <p>21 to this --</p> <p>22       <b>A. No.</b></p> <p>23       Q. -- related to your -- to the new company that's</p> <p>24 going to be producing it?</p> <p>25       <b>A. No.</b></p>
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<p>1       <b>A. Maybe March or April of '15.</b></p> <p>2       Q. And you didn't know him before that?</p> <p>3       <b>A. No.</b></p> <p>4       Q. So how did your relationship with Amar start?</p> <p>5       <b>A. I met him through my son, Ronnie Gabriel.</b></p> <p>6       Q. And did Ronnie introduce you to him?</p> <p>7       <b>A. Yes.</b></p> <p>8       Q. And why did Ronnie introduce you to him?</p> <p>9       <b>A. He was doing business with A to Z and selling</b></p> <p>10 <b>some of their products and for me to meet them.</b></p> <p>11       Q. Did he introduce you to him specifically</p> <p>12 related to the Mezquila product that you were planning?</p> <p>13       <b>A. No.</b></p> <p>14       Q. So how did the relationship develop into you</p> <p>15 talking to him about distributing this product?</p> <p>16       <b>A. He had -- he had some Tequila that I recognized</b></p> <p>17 <b>from before that were distributed by other people on</b></p> <p>18 <b>Antigua Cruz, and we started talking about the business</b></p> <p>19 <b>and stuff, and that's it.</b></p> <p>20       Q. This e-mail that Amar sent in November has an</p> <p>21 attachment that's on page 2. Do you see page 2? As far</p> <p>22 as you know, who wrote this?</p> <p>23       <b>A. Amar.</b></p> <p>24       Q. He did. And did he write this because you</p> <p>25 requested it?</p>	<p>1       Q. Okay. Is this the only production plan that</p> <p>2 Mr. -- or that Amar sent to you?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q. Did this seem realistic, the plan that he had?</p> <p>5       <b>A. I didn't know everything, so I just understood</b></p> <p>6 <b>by the regular production very sensible. I don't know</b></p> <p>7 <b>all the laws.</b></p> <p>8       Q. Okay. Okay. So Amar knows all the laws</p> <p>9 related to distribution and the like, and so you're</p> <p>10 counting on him for that?</p> <p>11       <b>A. I depended on him. Since he had been in</b></p> <p>12 <b>distribution, he knows more than I do.</b></p> <p>13       Q. Okay. Is Amar the person primarily responsible</p> <p>14 for planning distribution for A to Z?</p> <p>15       <b>A. I don't know.</b></p> <p>16       Q. Okay. Do you work with anybody else at A to Z?</p> <p>17       <b>A. Just one of its local employees, but I don't</b></p> <p>18 <b>remember the name.</b></p> <p>19       Q. By "local employee," you mean somebody who</p> <p>20 distributes here in San Antonio for him?</p> <p>21       <b>A. I don't -- yeah, I think they have an office in</b></p> <p>22 <b>Austin, but I don't know the people.</b></p> <p>23       Q. Okay. So on the Mezquila product, you mainly</p> <p>24 work with Amar?</p> <p>25       <b>A. Yes.</b></p>

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1	Q. And is the plan still today to have A to Z	1	A. No.
2	distribute Mezquila?	2	Q. Have you made any sales projections?
3	A. Yes.	3	A. No.
4	Q. Do you know, has Amar distributed start-up	4	Q. And why not? Why not?
5	products like this before?	5	A. I just -- we haven't gotten that far.
6	A. Repeat again.	6	Q. Have you thought about the amount that you're
7	Q. Has Amar distributed products that weren't	7	going to sell, even ballpark figures, number of bottles
8	already distributed by someone else or established	8	you think you will sell the first year, number of bottles
9	products, brand-new start-up products? Has he done that	9	the second year?
10	before?	10	A. No, ma'am, not really.
11	A. I don't know.	11	Q. Okay. Do you plan on having anyone, other than
12	Q. Let's talk a little bit about your business	12	A to Z, distribute this product?
13	plans for the Mezquila product. I think you mentioned	13	A. No.
14	that you need to have a distiller, a bottler, a	14	Q. And what geographic area does A to Z distribute
15	distributor. What is your plan for your company -- your	15	in?
16	and Rosalie's company, or just the two of you as	16	A. Texas.
17	individuals, as far as employees you will need to do this	17	Q. Okay. So is the plan only to sell Mezquila in
18	work?	18	Texas?
19	A. Rosalie and I -- you talking about starting a	19	A. For now.
20	company and hiring employees?	20	Q. Okay. Best case scenario, what expansion would
21	Q. Will you need employees?	21	you like to see?
22	A. No.	22	A. It would be the whole United States.
23	Q. Okay. Why not?	23	Q. And could A to Z handle that distribution or
24	A. All the other production and distribution	24	would you need other distributors?
25	and -- distribution is done by other people.	25	A. That, I don't know.
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1	Q. Okay. Will you need marketing people?	1	Q. Do you know A to Z's distribution capabilities?
2	A. No.	2	A. No.
3	Q. And why not?	3	Q. Do you know how many retail outlets they
4	A. A to Z does marketing.	4	distribute to?
5	Q. And will they handle all the advertising?	5	A. No.
6	A. Yes.	6	Q. Do they work in the whole state of Texas?
7	Q. Okay. Has A to Z given you a marketing or	7	A. Yes.
8	advertising plan?	8	Q. Do you know how many employees they have?
9	A. No.	9	A. No.
10	Q. And why not?	10	Q. Do you know how many salespeople they have?
11	A. Production won't be until May.	11	A. No.
12	Q. Have you talked with Amar about the type of	12	Q. Have you talked to their marketing department?
13	advertising or marketing you're planning to do?	13	A. No.
14	A. No.	14	Q. Do they have a marketing department?
15	Q. Has he mentioned any thoughts about marketing	15	A. I do not know.
16	and advertising?	16	Q. Okay. Do they have an advertising department?
17	A. No.	17	A. Do not know.
18	Q. As far as salespeople go, will they all be	18	Q. Do they do in-house advertising work, or do
19	working for Amar?	19	they send that to outside advertising agencies?
20	A. Yes.	20	A. Do not know.
21	Q. Okay. So you won't have -- as far as you know,	21	Q. Okay. Are you planning on having a website?
22	you won't have any employees; is that correct?	22	A. What?
23	A. Yes.	23	Q. Are you planning on having a website?
24	Q. Will you have a physical location, office	24	A. No.
25	space, that kind of thing?	25	Q. Okay. We've just been talking about your

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<p>1 business plans for -- for the Mezquila product. Do you</p> <p>2 have any written business plans, other than the one we</p> <p>3 saw in Exhibit 2?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Do you know if A to Z has any business plans</p> <p>6 related to Mezquila?</p> <p>7 <b>A. Do not know.</b></p> <p>8 Q. Would Amar be the person to ask about that?</p> <p>9 <b>A. Probably.</b></p> <p>10 Q. Do you anticipate having to purchase anything</p> <p>11 to run this business, for example, trucks, computers --</p> <p>12 <b>A. No.</b></p> <p>13 Q. -- desks, that sort of thing?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Okay. Looking at the documents that we were</p> <p>16 given, I noticed that it looks like maybe there's two</p> <p>17 plans for -- or plans for two different types of this</p> <p>18 brand, one a gold, and the other a silver; is that</p> <p>19 correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Okay. What's -- what's the difference between</p> <p>22 the two?</p> <p>23 <b>A. The white -- or the silver comes out without</b></p> <p>24 <b>any aging. The gold has some aging in the barrel.</b></p> <p>25 Q. Is the plan for Mezquila to be pure Tequila,</p>	<p>1 or water the distiller is planning on?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Who makes that decision about the mix? Is it</p> <p>4 the distiller or the bottler?</p> <p>5 <b>A. Both.</b></p> <p>6 Q. Okay. So do they work together on that?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Is this taste-tested? How do they decide?</p> <p>9 <b>A. I don't know, really. I don't know that</b></p> <p>10 <b>production side.</b></p> <p>11 Q. Is this something that when they start</p> <p>12 distilling, that you're going to make the decision?</p> <p>13 <b>A. I don't make that decision.</b></p> <p>14 Q. Okay. So who would make that decision?</p> <p>15 <b>A. The bottler.</b></p> <p>16 Q. Okay. And do you know what they would consider</p> <p>17 in making that decision?</p> <p>18 <b>A. I do not know, ma'am. It's all production. I</b></p> <p>19 <b>do not know.</b></p> <p>20 Q. Okay. Do you know if they've started making</p> <p>21 that blend yet for the Mezquila product?</p> <p>22 <b>A. No.</b></p> <p>23 Q. You don't know, or they haven't started?</p> <p>24 <b>A. I don't know. I don't know, but -- I don't</b></p> <p>25 <b>know where they're at right now, so...</b></p>
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<p>1 not blended with anything else?</p> <p>2 <b>A. The plan is to be a mixed, at least by law it</b></p> <p>3 <b>has to be 51 percent agave.</b></p> <p>4 Q. And what's the other percentage?</p> <p>5 <b>A. Grain neutral spirit or water.</b></p> <p>6 Q. What is a grain neutral spirit?</p> <p>7 <b>A. Just alcohol.</b></p> <p>8 Q. So grain alcohol?</p> <p>9 <b>A. Yes, ma'am.</b></p> <p>10 Q. Maybe from wheat or corn or --</p> <p>11 <b>A. I do not know.</b></p> <p>12 Q. Okay. Okay. Well, do you know what neutral</p> <p>13 refers to?</p> <p>14 <b>A. I do not know.</b></p> <p>15 Q. Okay. But both the gold and the silver will be</p> <p>16 at least 51 percent agave?</p> <p>17 <b>A. That is the law.</b></p> <p>18 Q. Okay. Whose law?</p> <p>19 <b>A. Mexico, United States. I don't know.</b></p> <p>20 Q. Okay.</p> <p>21 <b>A. Probably Mexico.</b></p> <p>22 Q. Okay. And by 51 percent agave, does that mean</p> <p>23 51 percent derived from -- from the agave plant?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. Okay. So do you know what grain neutral spirit</p>	<p>1 Q. Okay. Will they give you a few samples to try,</p> <p>2 and then you will make the final decision about which</p> <p>3 blend should be used?</p> <p>4 <b>A. They make the blend, and we just either approve</b></p> <p>5 <b>it or don't approve it.</b></p> <p>6 Q. Okay. And do you know how long it will be</p> <p>7 until they get to that point?</p> <p>8 <b>A. Probably May.</b></p> <p>9 Q. Other than the gold and silver versions, are</p> <p>10 you planning any other products under the Mezquila mark?</p> <p>11 <b>A. It depends on how successful it is.</b></p> <p>12 Q. Okay. So right now you're planning those two?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. Do you have any thoughts or dreams about</p> <p>15 doing additional versions?</p> <p>16 <b>A. At my age, I don't have much to look for in the</b></p> <p>17 <b>future, but it could be. Whatever works out.</b></p> <p>18 Q. Okay. So there may be additional Mezquila</p> <p>19 products in addition to the gold and silver?</p> <p>20 <b>A. It all depends on how the two do, first.</b></p> <p>21 Q. Okay. Is the Tequila -- retail Tequila</p> <p>22 business a highly competitive one?</p> <p>23 <b>A. Extremely.</b></p> <p>24 Q. And why is that? Again, forgive me that I</p> <p>25 don't know anything about this business.</p>

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<p>1       <b>A. (Witness nods affirmatively.)</b></p> <p>2       Q.    Okay. Does the Tequila come in big barrels?</p> <p>3   How does it show up at the bottler?</p> <p>4       <b>A. I do not know.</b></p> <p>5       Q.    Okay. Do you have a proposed contract from A</p> <p>6   to Z yet?</p> <p>7       <b>A. No.</b></p> <p>8       Q.    So the work you're doing with A to Z right now,</p> <p>9   is that just based on oral agreements?</p> <p>10       <b>A. Yes.</b></p> <p>11       Q.    Okay. Have you talked about the percentage</p> <p>12   royalty that you will get paid?</p> <p>13       <b>A. No.</b></p> <p>14       Q.    Have you thought about the percentage you would</p> <p>15   like to get?</p> <p>16       <b>A. I would like to get all of it, but, no, ma'am,</b></p> <p>17   <b>I have not put any thought into it.</b></p> <p>18       Q.    Okay. Do you know what's typical for this type</p> <p>19   of arrangement?</p> <p>20       <b>A. No.</b></p> <p>21       Q.    When do you anticipate executing that sales</p> <p>22   contract?</p> <p>23       <b>A. May.</b></p> <p>24       Q.    And has Amar told you that he'll propose it to</p> <p>25   you, he'll give it to you, or are you going to write it</p>	<p>1   <b>you know, business --</b></p> <p>2       Q.    Okay.</p> <p>3       <b>A. -- at all.</b></p> <p>4       Q.    Okay. Do you know what percentage of their</p> <p>5   sales of Tequila go to package liquor stores and what</p> <p>6   percentage goes to restaurants?</p> <p>7       <b>A. No, I don't.</b></p> <p>8       Q.    Okay. I think I already asked this, but I'm</p> <p>9   going to ask again: Do you know if they have any written</p> <p>10   plans for their distribution of Mezquila?</p> <p>11       <b>A. I do not know, ma'am.</b></p> <p>12       Q.    And you don't know if they have any written</p> <p>13   plans for marketing or advertising?</p> <p>14       <b>A. I do not know.</b></p> <p>15       Q.    Okay. Let's take a look at what we'll label</p> <p>16   Exhibit 3.</p> <p>17                   (Exhibit Number 3 marked)</p> <p>18       Q.    Do you recognize Exhibit 3? Do you recognize</p> <p>19   this document?</p> <p>20       <b>A. Yes, ma'am.</b></p> <p>21       Q.    Okay. And what is it?</p> <p>22       <b>A. It's a flight -- flight document to</b></p> <p>23   <b>Guadalajara.</b></p> <p>24       Q.    And when did you take this trip that is being</p> <p>25   discussed in this document? I guess I should back up.</p>
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<p>1   and give it to him?</p> <p>2       <b>A. We do not know yet.</b></p> <p>3       Q.    We talked a little bit about the plan to -- for</p> <p>4   A to Z to distribute here in Texas first. Is your plan</p> <p>5   to distribute to specific types of retail packaged stores</p> <p>6   and restaurants or any that will buy?</p> <p>7       <b>A. I do not know his plans.</b></p> <p>8       Q.    Okay. Okay. I think I saw somewhere in the</p> <p>9   documents that you're aiming toward a relatively low</p> <p>10   Texas price point on this; is that correct?</p> <p>11       <b>A. Repeat again.</b></p> <p>12       Q.    That you're aiming for a relatively low Texas</p> <p>13   price point on this product; is that correct?</p> <p>14       <b>A. It will be low price, yes.</b></p> <p>15       Q.    Okay. So approximately how much?</p> <p>16       <b>A. Take a break?</b></p> <p>17       Q.    Absolutely.</p> <p>18               MR. PAUL: Go off the record.</p> <p>19               (Recess from 9:39 a.m. to 9:43 a.m.)</p> <p>20       Q.    (By Ms. Meyer) Before we took a break,</p> <p>21   Mr. Gabriel, we were talking about how we previously</p> <p>22   spoke about A to Z marketing the Mezquila product in</p> <p>23   Texas and how -- and I was asking if you know the plan</p> <p>24   for where they would try to market this.</p> <p>25       <b>A. No, ma'am, I don't know anything of A to Z's,</b></p>	<p>1   Did you take the trip that was discussed in this</p> <p>2   document? Did you take this trip?</p> <p>3       <b>A. Yes.</b></p> <p>4       Q.    Okay. And who went on this trip?</p> <p>5       <b>A. Rosalie and Chuck Parish.</b></p> <p>6       Q.    Okay. Who is Chuck Parish?</p> <p>7       <b>A. He's our wholesale representative taking care</b></p> <p>8   <b>of all the on-premise accounts.</b></p> <p>9       Q.    And he's the wholesale representative for SA</p> <p>10   Discount Liquor?</p> <p>11       <b>A. Well -- or Gabriel Investment Group.</b></p> <p>12       Q.    Okay. And what do you mean by he's a wholesale</p> <p>13   representative?</p> <p>14       <b>A. He takes care of the accounts.</b></p> <p>15       Q.    So he -- he takes care of the -- the folks that</p> <p>16   are trying to sell liquor for you to retail?</p> <p>17       <b>A. No, ma'am.</b></p> <p>18       Q.    He handles those accounts?</p> <p>19       <b>A. No, ma'am, on-premise. On-premise is clubs and</b></p> <p>20   <b>restaurants.</b></p> <p>21       Q.    Oh, okay. Okay. So he sells -- he sells</p> <p>22   products to clubs and restaurants?</p> <p>23       <b>A. Yes.</b></p> <p>24       Q.    Got it. And why did he go on this trip?</p> <p>25       <b>A. I wanted him to be able to meet with the</b></p>



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<p>1 distillers that we were talking to about making Mezquila.</p> <p>2 Q. And why did you want him to do that?</p> <p>3 A. Because I wanted his advice on the product.</p> <p>4 Q. So by "his advice," do you mean taste testing</p> <p>5 and seeing if it's good stuff?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Is he something of a Tequila expert?</p> <p>8 A. He's -- he's been doing it a long time, yes,</p> <p>9 ma'am.</p> <p>10 Q. Okay.</p> <p>11 A. Not an expert, but the business, on-premise.</p> <p>12 Q. So when he was looking at these different</p> <p>13 Tequilas that you were considering, was he considering</p> <p>14 them for the on-premise sales or just whether they were</p> <p>15 good Tequilas in general?</p> <p>16 A. Just the on-premise sales.</p> <p>17 Q. Is there something in particular you consider</p> <p>18 for on-premise sales that's different than packaged</p> <p>19 sales?</p> <p>20 A. It has, first, to be able to be sold on</p> <p>21 premise, and then you can always look at the retail</p> <p>22 possibilities.</p> <p>23 Q. And what do you mean by it has to be able to</p> <p>24 sell on premise?</p> <p>25 A. Well --</p>	<p>1 don't match. I don't know why.</p> <p>2 Q. I think -- I think they do if you look at the</p> <p>3 flight information. That's the third day of the ninth</p> <p>4 month in 2015.</p> <p>5 A. Oh, this is Mexico. They use the ninth in the</p> <p>6 middle of September, so --</p> <p>7 Q. Right.</p> <p>8 A. -- that's why we're both confused.</p> <p>9 Q. That's exactly right. Okay. Good. So do</p> <p>10 those dates sound correct to you?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So in September of 2015, you, Rosalie</p> <p>13 and Chuck went to Guadalajara?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And who did you meet with there?</p> <p>16 A. Jose Cuervo.</p> <p>17 Q. Okay. And who else?</p> <p>18 A. And then Sergio -- Sergio from Viva Mexico</p> <p>19 Tequila. That's all I remember, his first name, Sergio.</p> <p>20 Q. Okay. And did you meet with anyone else that</p> <p>21 trip?</p> <p>22 A. Yeah. The people that distill El Mexicano.</p> <p>23 Q. Now, when you say the people who distill it,</p> <p>24 are those people that you're planning on having distill</p> <p>25 it now?</p>
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<p>1 Q. Legally or?</p> <p>2 A. At the restaurant, that clubs will buy it.</p> <p>3 Q. Okay. So because it tastes good, is that what</p> <p>4 you're going towards here?</p> <p>5 A. It passes their taste profile, yes.</p> <p>6 Q. Okay. What's a taste profile?</p> <p>7 A. Just they agree with it, that's all.</p> <p>8 Q. Is there something different for on-premise</p> <p>9 sales than packaged sales?</p> <p>10 A. Not anything different, but they have different</p> <p>11 uses. They use it in a machine or use it to mix</p> <p>12 margaritas.</p> <p>13 Q. It looks like, from this document, that the</p> <p>14 trip was March of 2015; is that right?</p> <p>15 A. I don't know. The dates don't -- don't match.</p> <p>16 I don't know why the dates are different.</p> <p>17 Q. I'm reading it wrong. That's why.</p> <p>18 MR. PAUL: Yes.</p> <p>19 Q. I'm reading it in the American style and not</p> <p>20 the rest of the world. Yeah, it looks like it's</p> <p>21 September 3rd and returning September 6th.</p> <p>22 A. Yes.</p> <p>23 Q. The rest of the world doesn't -- correct me</p> <p>24 by --</p> <p>25 A. I think it was September. Even here the dates</p>	<p>1 A. No. No.</p> <p>2 Q. Okay. El Mexicano, who did they distill for?</p> <p>3 A. They're just another Tequila. They're --</p> <p>4 Q. Okay. All right. Now, did you meet with</p> <p>5 anyone else on that trip?</p> <p>6 A. No. Those were the three.</p> <p>7 Q. Now, does Jose Cuervo distill product for</p> <p>8 private labeling?</p> <p>9 A. No, ma'am. We were just guests of theirs, for</p> <p>10 their -- Cuervo.</p> <p>11 Q. Okay. And Viva Mexico Tequila, are they a</p> <p>12 distiller?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you say you met with someone named</p> <p>15 Sergio?</p> <p>16 A. Yeah. I don't remember his last name. Sergio.</p> <p>17 We went over the products he had and the price.</p> <p>18 Q. And was he offering to distill products for the</p> <p>19 Mezquila product?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And how did that meeting go?</p> <p>22 A. Not well.</p> <p>23 Q. Okay. Why not?</p> <p>24 A. The price and the production is too high.</p> <p>25 Q. So did you have any follow-up conversations</p>

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<p>1 with Sergio after that meeting?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Okay. And then you met with a company called</p> <p>4 El Mexicano?</p> <p>5 <b>A. Yeah, but that was only for regular -- their</b></p> <p>6 <b>product. They wanted to show us their new distillery.</b></p> <p>7 Q. Okay. So they were not offering to distill</p> <p>8 product for you?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. They were just starting up on theirs.</b></p> <p>12 Q. Okay. So you were a guest there, somewhat like</p> <p>13 Jose Cuervo?</p> <p>14 <b>A. We were a guest at Cuervo, correct.</b></p> <p>15 Q. Okay. So on this trip in September, it's -- is</p> <p>16 it fair to say that you met with one potential distiller</p> <p>17 for Mezquila, but it didn't work?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Okay. Did you take any other trips to Mexico</p> <p>20 to meet with distillers?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Did Sergio provide any documents, any proposals</p> <p>23 in writing?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Okay. Had he e-mailed you any information?</p>	<p>1 and --</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Okay. And restaurants?</p> <p>4 <b>A. Correct.</b></p> <p>5 Q. So sort of a marketing guy?</p> <p>6 <b>A. That's what I think he is, yes.</b></p> <p>7 Q. Okay. So Steve put you in touch with Sergio?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. Did Steve give you any documents related</p> <p>10 to Sergio's products?</p> <p>11 <b>A. No, just brought some liquid to taste.</b></p> <p>12 Q. What other distillers have you met with?</p> <p>13 <b>A. Don Ramon.</b></p> <p>14 Q. And where is Don Ramon based?</p> <p>15 <b>A. Don Ramon, I guess based in Guadalajara, but</b></p> <p>16 <b>they have an office in San Antonio.</b></p> <p>17 Q. And did you meet with -- with the Don Ramon</p> <p>18 people here in San Antonio?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And when did you meet with them?</p> <p>21 <b>A. In February.</b></p> <p>22 Q. February?</p> <p>23 <b>A. Of '15.</b></p> <p>24 Q. Okay. And who did you meet with?</p> <p>25 <b>A. I gave the names. Alejandro, Don Ramon and --</b></p>
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<p>1 <b>A. No.</b></p> <p>2 Q. Did he have any information that you looked at</p> <p>3 before you went and met with him?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Who put you in touch with Sergio?</p> <p>6 <b>A. His representative in Texas.</b></p> <p>7 Q. So what kind of a representative does a</p> <p>8 distiller have in Texas? Does that represent a title?</p> <p>9 <b>A. I don't know that title. No, they just have</b></p> <p>10 <b>representatives to market their products and push it.</b></p> <p>11 Q. And who put you in touch with them?</p> <p>12 <b>A. Steve.</b></p> <p>13 Q. Who is Steve?</p> <p>14 <b>A. Steve Voladez (phonetic), that's all I know him</b></p> <p>15 <b>by.</b></p> <p>16 Q. And what is Steve's last name?</p> <p>17 <b>A. Voladez (phonetic). I can't even spell it.</b></p> <p>18 <b>It's almost like a Greek name. Voladez (phonetic).</b></p> <p>19 Q. And how do you know Steve?</p> <p>20 <b>A. He sells, you know, products and been selling</b></p> <p>21 <b>products in Texas for many years.</b></p> <p>22 Q. Is he a distributor like Amar?</p> <p>23 <b>A. No. He's just a representative of whatever</b></p> <p>24 <b>company he works for.</b></p> <p>25 Q. So does he represent products to retail stores</p>	<p>1 <b>and Uriel. That's the way I know them, so I apologize.</b></p> <p>2 Q. Okay. And we'll go back over that list here in</p> <p>3 a little while. Have you met with any other distillers?</p> <p>4 <b>A. Just the ones that are the current ones, the</b></p> <p>5 <b>Antigua Cruz people that are -- is the last ones I met</b></p> <p>6 <b>with one.</b></p> <p>7 Q. Of the distillers that you've spoken with, do</p> <p>8 you have any letters or documents or e-mails</p> <p>9 communicating with them?</p> <p>10 <b>A. Only what -- what I've given my attorney.</b></p> <p>11 Q. Okay. But no -- no others?</p> <p>12 <b>A. No others.</b></p> <p>13 Q. And I think you said that the only trip to</p> <p>14 Mexico that you've made to meet with distillers was the</p> <p>15 one trip to Guadalajara.</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Correct? Have you made trips to anywhere other</p> <p>18 than Mexico to meet with --</p> <p>19 <b>A. No.</b></p> <p>20 Q. Okay. All right. Let's look at Exhibit 4.</p> <p>21 (Exhibit Number 4 marked)</p> <p>22 Q. Do you recognize Exhibit 4?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And what is it?</p> <p>25 <b>A. Yes.</b></p>

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<p>1 Q. And what is Exhibit 4?</p> <p>2 <b>A. Label, first label to look at for the product.</b></p> <p>3 Q. Okay. And was this sent as an attachment to an</p> <p>4 e-mail from Amar?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. Okay. Do you know who --</p> <p>7 <b>A. No.</b></p> <p>8 Q. -- created these labels?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay.</p> <p>11 MR. PAUL: Let her finish the question,</p> <p>12 please.</p> <p>13 Q. Did he send you these labels upon your request?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And what had you requested of him?</p> <p>16 <b>A. Repeat again.</b></p> <p>17 Q. What did you request for him to do?</p> <p>18 <b>A. Just label for the Mezquila product.</b></p> <p>19 Q. Did you talk to him before he created these</p> <p>20 about what you wanted to see on it in general, ideas for</p> <p>21 the label?</p> <p>22 <b>A. Yeah. I just told him to send me a design for</b></p> <p>23 <b>the labels and I just wanted to see what his thoughts</b></p> <p>24 <b>were.</b></p> <p>25 Q. Was this the first shot at a label?</p>	<p>1 he proposing that both be used?</p> <p>2 <b>A. He was just sending some labels, you know, just</b></p> <p>3 <b>to look at.</b></p> <p>4 Q. Okay. So the -- the -- on page -- the first --</p> <p>5 the second and third page of the exhibit, is this the</p> <p>6 current plan for the label?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Okay. What didn't you like about this label?</p> <p>9 <b>A. It didn't have any design on it.</b></p> <p>10 Q. Okay. So did you call him and tell him?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Okay. And what did he do then?</p> <p>13 <b>A. He sent some new labels.</b></p> <p>14 Q. Okay. And have you approved those new labels?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. We'll get to that next. Let's move to</p> <p>17 Exhibit 5.</p> <p>18 (Exhibit Number 5 marked)</p> <p>19 Q. Do you recognize the document, Exhibit 5? Do</p> <p>20 you recognize this document?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Okay. And what is it?</p> <p>23 <b>A. Repeat.</b></p> <p>24 Q. What is this document?</p> <p>25 <b>A. The new labels I approved.</b></p>
Page 54	Page 56
<p>1 <b>A. Yes.</b></p> <p>2 Q. And did you like these labels? Did you like</p> <p>3 them?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Okay. What didn't you like about them?</p> <p>6 <b>A. The skull. The death part, I didn't care for.</b></p> <p>7 Q. Okay. Were they basically identical between</p> <p>8 the silver and the gold, other than the silver seemed to</p> <p>9 have some blue, and the gold seemed to have more gold?</p> <p>10 Was that basically the difference?</p> <p>11 <b>A. I think so.</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. We don't have color on that, but I think it</b></p> <p>14 <b>did.</b></p> <p>15 Q. So how did you tell Amar that you were</p> <p>16 displeased with the drafts?</p> <p>17 <b>A. Yeah, I told him to take the skulls off and put</b></p> <p>18 <b>the agave plant.</b></p> <p>19 Q. Okay. And did he do that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Okay. It looks like there were two versions on</p> <p>22 here. When you take a look at the first two pages, I</p> <p>23 don't see any skulls.</p> <p>24 <b>A. No, just the last one.</b></p> <p>25 Q. Okay. What -- were these alternatives, or was</p>	<p>1 Q. Okay. And when did Amar send you these labels?</p> <p>2 <b>A. Probably right after that. I don't have the</b></p> <p>3 <b>exact date.</b></p> <p>4 Q. Okay. Is -- if you look at the first page, is</p> <p>5 this dated December 17th, 2015?</p> <p>6 <b>A. Could be.</b></p> <p>7 Q. And do you know who created these --</p> <p>8 <b>A. No.</b></p> <p>9 Q. -- new proposed labels?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Okay. Are these the versions that you plan to</p> <p>12 go with in the future?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. I noticed that these labels have some</p> <p>15 regulatory information --</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. -- on the bottom. Who decides what goes on</p> <p>18 that label?</p> <p>19 <b>A. Whoever designs the labels knows the law. I</b></p> <p>20 <b>don't.</b></p> <p>21 Q. Okay. So do you think it's the distiller, or</p> <p>22 is it A to Z?</p> <p>23 <b>A. I do not know.</b></p> <p>24 Q. Okay. If you look at the very last page of the</p> <p>25 exhibit, the first line says they comply with CRT and TTB</p>

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<p>1 terminology and size. Do you know what that refers to?</p> <p>2 <b>A. Probably Mexico law. The TTB is the alcoholic</b></p> <p>3 <b>bureau of the United States.</b></p> <p>4 Q. Okay. And CRT?</p> <p>5 <b>A. Is the Mexico one.</b></p> <p>6 Q. Okay. So does Tequila have to comply with both</p> <p>7 country's laws?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. I noticed that this e-mail on the last</p> <p>10 page is from Raul Romero. Who is Raul?</p> <p>11 <b>A. The Antigua Cruz people.</b></p> <p>12 Q. By Antigua Cruz --</p> <p>13 <b>A. It's the distiller, Tequila.</b></p> <p>14 Q. Okay. So they're the distiller. His signature</p> <p>15 line says, "CTA Premium Brands."</p> <p>16 <b>A. I do not know that -- about that.</b></p> <p>17 Q. Okay. Is he based in Austin, as far as you</p> <p>18 know?</p> <p>19 <b>A. As far as I can see from the address.</b></p> <p>20 Q. Is Raul primarily working with Amar?</p> <p>21 <b>A. As far as I know.</b></p> <p>22 Q. Okay. So do you know how they work together on</p> <p>23 this label?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you know, is CTA Premium Brands --</p>	<p>1 Exhibit 5, it looks like this is an e-mail from Lynette.</p> <p>2 Does Lynette work for you?</p> <p>3 <b>A. She works for Gabriel Investment.</b></p> <p>4 Q. On the third line of this e-mail, she says, "In</p> <p>5 February, Mr. Gabriel met at Don Ramon Distillery."</p> <p>6 Remind me where Don Ramon was.</p> <p>7 <b>A. Don Ramon, it's a distiller. They sell Don</b></p> <p>8 <b>Ramon Tequila.</b></p> <p>9 Q. And where are they located?</p> <p>10 <b>A. Their distillery is in Guadalajara, and --</b></p> <p>11 Q. Okay. And did you meet with them here in</p> <p>12 San Antonio?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Do they have an office here?</p> <p>15 <b>A. Don Ramon?</b></p> <p>16 Q. Uh-huh.</p> <p>17 <b>A. Don Ramon, no.</b></p> <p>18 Q. It looks like, based on this, that you met with</p> <p>19 Carlos Arnaiz, Enrique Ramon and Alejandro Valdes; is</p> <p>20 that correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And do you know their titles at the company?</p> <p>23 <b>A. The only thing I know is Don Ramon is the</b></p> <p>24 <b>owner. Enrique Ramon is the owner. That's the only</b></p> <p>25 <b>thing I know.</b></p>
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<p>1 <b>A. Repeat again.</b></p> <p>2 Q. Is CTA Premium Brands, that's his signature</p> <p>3 line?</p> <p>4 <b>A. I know nothing about them.</b></p> <p>5 Q. Okay. So they're not the company you're</p> <p>6 working with to distill the product?</p> <p>7 <b>A. I don't know their structure, ma'am.</b></p> <p>8 Q. Okay. On the second line of this exhibit, it</p> <p>9 says, "However, Trey will need to generate his own UPC."</p> <p>10 Do you know who Trey is?</p> <p>11 <b>A. Trey is the owner of Cinco, Cinco brands or the</b></p> <p>12 <b>Cinco Distilling here in San Antonio.</b></p> <p>13 Q. And how is Cinco Distilling involved in this?</p> <p>14 <b>A. They're going to be the bottler.</b></p> <p>15 Q. Okay. Cinco Distilling is going to be the</p> <p>16 bottler?</p> <p>17 <b>A. (Witness nods affirmatively.)</b></p> <p>18 Q. If you take a look at the label that's the gold</p> <p>19 label, it says, "Bottled at Azar Distilling, LLC." How</p> <p>20 is Azar Distilling related to --</p> <p>21 <b>A. Trey's last name. Trey Azar.</b></p> <p>22 Q. Okay. So is it going to be Azar Distilling or</p> <p>23 Cinco Distilling?</p> <p>24 <b>A. I think that's their legal name, Azar.</b></p> <p>25 Q. Okay. If we take a look at the first page of</p>	<p>1 Q. Who are these gentlemen?</p> <p>2 <b>A. I'm sure they work for him.</b></p> <p>3 Q. And where did you meet with them?</p> <p>4 <b>A. At the Gabriel Investment office.</b></p> <p>5 Q. So they -- they came to you?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And did they bring a proposal?</p> <p>8 <b>A. We just discussed. There was no project, just</b></p> <p>9 <b>discussed whether to make it or not make it, taxes,</b></p> <p>10 <b>production, you know, just a discussion whether it was</b></p> <p>11 <b>doable.</b></p> <p>12 Q. How did you know Don Ramon to call and ask them</p> <p>13 to come?</p> <p>14 <b>A. From -- they sell the Don Ramon Tequila.</b></p> <p>15 Q. Okay. And did you know that they sell private</p> <p>16 label Tequila or Tequila you could private label?</p> <p>17 <b>A. I don't know their business, no.</b></p> <p>18 Q. Okay. So why did you invite them over?</p> <p>19 <b>A. Just to find out if it was doable on Mezquila.</b></p> <p>20 Q. And what conclusion did you come to?</p> <p>21 <b>A. They basically didn't have a decision, and we</b></p> <p>22 <b>just discussed all the aspects of production.</b></p> <p>23 Q. Okay. What aspects did you talk about?</p> <p>24 <b>A. Number 1, taxes; Number 1 [sic], cost of</b></p> <p>25 <b>bottle; Number 1 -- Number 3, cost of -- you know, cap,</b></p>

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<p>1 cost of label, cost of boxes, but the main stumbling</p> <p>2 block was the taxes.</p> <p>3 Q. And why was that a stumbling block?</p> <p>4 A. Because it stumbles three and a half dollars,</p> <p>5 even -- before you even, you know, do anything, that's</p> <p>6 tax on a bottle.</p> <p>7 Q. Okay. And is that still true? Is that still</p> <p>8 true?</p> <p>9 A. Yes.</p> <p>10 Q. So why did you consider that a stumbling block</p> <p>11 in February, but today is not a stumbling block?</p> <p>12 A. Basically, we come to a decision how to be able</p> <p>13 to make it work.</p> <p>14 Q. And how can you make it work now that you</p> <p>15 couldn't then?</p> <p>16 A. Production and being able to acquire materials</p> <p>17 at a good price and bottling it here.</p> <p>18 Q. Okay. Were the Don Ramon folks proposing that</p> <p>19 they would bottle it in Guadalajara?</p> <p>20 A. Correct.</p> <p>21 Q. And were they proposing that they would</p> <p>22 distribute it?</p> <p>23 A. We never -- we never reached that.</p> <p>24 Q. Okay. Had you worked with any of those three</p> <p>25 gentlemen before?</p>	<p>1 A. Correct.</p> <p>2 Q. Is that the same thing?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And then the last -- the last</p> <p>5 substantive paragraph on Exhibit 5 on this e-mail, it</p> <p>6 says, "On December 3rd, Mr. Gabriel also met with</p> <p>7 Trey" -- is it Azar or Azar?</p> <p>8 A. Yes.</p> <p>9 Q. "Azar Distillery in San Antonio, and Raul</p> <p>10 Romero is with Compania Tequilera" -- I'm going to</p> <p>11 butcher some of this. So in December, is that the first</p> <p>12 time that you met with Trey Azar?</p> <p>13 A. On the subject of Mezquila, yes.</p> <p>14 Q. Did you know Trey before that?</p> <p>15 A. Yes.</p> <p>16 Q. And how do you know Trey?</p> <p>17 A. His father was partners with us.</p> <p>18 Q. Okay. Partners with you on what?</p> <p>19 A. On -- on the Gabriel Investment Group.</p> <p>20 Q. And is his father no longer a partner with you?</p> <p>21 A. No.</p> <p>22 Q. Have you worked with Trey before?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And how have you worked with Trey</p> <p>25 before?</p>
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<p>1 A. No.</p> <p>2 Q. Did they do any follow-up communications with</p> <p>3 you after this meeting?</p> <p>4 A. No.</p> <p>5 Q. Did they send any e-mails or any other</p> <p>6 communications that was in writing?</p> <p>7 A. No.</p> <p>8 Q. On the fourth line of this Exhibit 5, it says,</p> <p>9 "In early September, Mr. Gabriel met with Sergio Vivanco</p> <p>10 Distillery." Where is Sergio Vivanco Distillery?</p> <p>11 A. Arandas, Mexico.</p> <p>12 Q. So did you have to go there?</p> <p>13 A. Yes.</p> <p>14 Q. And that's that same trip that you took --</p> <p>15 A. Yes.</p> <p>16 Q. That's that same early September trip? Okay.</p> <p>17 Got it.</p> <p>18 A. Yes.</p> <p>19 Q. And is this the same distillery that you were</p> <p>20 also calling Viva Mexico Tequila?</p> <p>21 A. Repeat again.</p> <p>22 Q. Is this the same distillery that I think we</p> <p>23 discussed earlier was Viva Mexico Tequila?</p> <p>24 A. Correct.</p> <p>25 Q. And it's also Sergio Vivanco Distillery?</p>	<p>1 A. At the Gabriel Investment Group, and also he</p> <p>2 sells Cinco Vodka.</p> <p>3 Q. So is Azar Distillery going to be the bottler</p> <p>4 for your product?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know, do they bottle other Tequila</p> <p>7 products?</p> <p>8 A. No.</p> <p>9 Q. You don't know if they do?</p> <p>10 A. No, I don't know. I know that they bottle</p> <p>11 Cinco Vodka. That's it.</p> <p>12 Q. Do they buy Cinco Vodka from a distiller and</p> <p>13 then they bottle it? Is that how that works?</p> <p>14 A. I think they make the liquid or buy the liquid,</p> <p>15 and then they distill it, and then they bottle it.</p> <p>16 Q. So they actually distill the vodka at Azar?</p> <p>17 A. They do distillation of some type. I don't</p> <p>18 know what, exactly.</p> <p>19 Q. Okay. Do they distill any Tequila?</p> <p>20 A. I don't know. No.</p> <p>21 Q. They probably can't --</p> <p>22 A. Not that I know of.</p> <p>23 Q. Doesn't Tequila have to be distilled in Mexico?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you know if they bottle any other</p>

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<p>1 liquor at --</p> <p>2 <b>A. I do not know.</b></p> <p>3 Q. On this e-mail, it says that you met with Trey</p> <p>4 on December 3rd. Where was that meeting?</p> <p>5 <b>A. At the Cinco distillery.</b></p> <p>6 Q. And was that the first time you met with Trey</p> <p>7 about bottling Mezquila?</p> <p>8 <b>A. I think so.</b></p> <p>9 Q. And what did you talk about at that meeting?</p> <p>10 <b>A. Same thing, production cost, material cost,</b></p> <p>11 <b>taxes, transportation, quite a few things.</b></p> <p>12 Q. And did he make a proposal at that meeting?</p> <p>13 <b>A. Trey?</b></p> <p>14 Q. Uh-huh. Yes.</p> <p>15 <b>A. No.</b></p> <p>16 Q. Okay. What did you discuss about production</p> <p>17 costs at that meeting?</p> <p>18 <b>A. Repeat again.</b></p> <p>19 Q. What did you discuss about production costs?</p> <p>20 <b>A. Not I, mostly. I mostly listened. It was</b></p> <p>21 <b>mostly Romero, Raul and Trey talking what they had to do</b></p> <p>22 <b>and how to make it work.</b></p> <p>23 Q. Did he give any ballpark numbers on production</p> <p>24 costs, on material costs?</p> <p>25 <b>A. No.</b></p>	<p>1 Q. And do you know if they have had future</p> <p>2 conversations?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Do you know if they've come to agreements about</p> <p>5 production costs, material costs, taxes?</p> <p>6 <b>A. As far as I know, yes.</b></p> <p>7 Q. Have they copied you on any documents or</p> <p>8 communications?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Do they, as far as you know, keep Amar in the</p> <p>11 loop, too, between their conversations?</p> <p>12 <b>A. I'm sure.</b></p> <p>13 Q. Okay. On this relationship, who's in charge?</p> <p>14 Do you think Amar is in charge amongst those three, in</p> <p>15 guiding this?</p> <p>16 <b>A. There's nobody in charge there. They're their</b></p> <p>17 <b>own bosses. They're just trying to make an agreement.</b></p> <p>18 Q. Do you know if they've executed any contracts</p> <p>19 between the three?</p> <p>20 <b>A. I do not know.</b></p> <p>21 Q. Have they told you that they were considering</p> <p>22 contracts between the three?</p> <p>23 <b>A. I do not have that type of information.</b></p> <p>24 Q. Would Amar know?</p> <p>25 <b>A. What?</b></p>
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<p>1 Q. Okay. What made you want to move forward</p> <p>2 with -- with Trey being the bottler for this product?</p> <p>3 <b>A. The distiller and Trey had to agree.</b></p> <p>4 Q. So was the distiller at that meeting? Was the</p> <p>5 distiller at that meeting?</p> <p>6 <b>A. Was who?</b></p> <p>7 Q. The distiller at that meeting December 3rd?</p> <p>8 <b>A. Yeah. Raul, yes.</b></p> <p>9 Q. Okay.</p> <p>10 <b>A. The Tequila people from Antigua Cruz. That's</b></p> <p>11 <b>the way I identify them. Sorry.</b></p> <p>12 Q. And who set up that meeting?</p> <p>13 <b>A. Amar.</b></p> <p>14 Q. So was Amar at this meeting, too?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And what did Raul and Trey agree to at that</p> <p>17 meeting?</p> <p>18 <b>A. I don't know.</b></p> <p>19 Q. Did they agree to anything?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Did they talk about proposals that they would</p> <p>22 exchange?</p> <p>23 <b>A. The only thing I know is that they were going</b></p> <p>24 <b>to have future conversations on how to make it work.</b></p> <p>25 <b>That's all I know.</b></p>	<p>1 Q. Would Amar know? Is that the type of thing he</p> <p>2 might know?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Okay. Let's label this Exhibit 6.</p> <p>5 (Exhibit Number 6 marked)</p> <p>6 Q. Have you seen the document we've labeled</p> <p>7 Exhibit 6 before?</p> <p>8 <b>A. Yes, ma'am.</b></p> <p>9 Q. Okay. And what is it?</p> <p>10 <b>A. I'm sorry?</b></p> <p>11 Q. What is this document?</p> <p>12 <b>A. It looks like, I guess, the document going to</b></p> <p>13 <b>the trademark office.</b></p> <p>14 Q. Okay. And I'll represent to you that this is</p> <p>15 the First Amended Disclosures that your attorney filed</p> <p>16 for you that lets me and my client know witnesses and</p> <p>17 people who know about this matter. Does that comport</p> <p>18 with the way you understand this?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Okay. And you will see on this a list of</p> <p>21 people that -- that are -- were potential witnesses or</p> <p>22 are potential witnesses in this case. And I'm just going</p> <p>23 to go through them, and those that we haven't talked</p> <p>24 about yet, we'll talk about. Does that sound good?</p> <p>25 <b>A. Yes.</b></p>

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<p>1 Q. Okay. Number 1 is obviously you and Rosalie, 2 and we've talked a little bit about the fact that you 3 worked together a very long time. On this Mezquila 4 matter, is there any subjects that she would no more than 5 you?</p> <p>6 A. No.</p> <p>7 Q. Okay. Have you been the primary person working 8 on this matter between you and Rosalie?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. What I'm basically asking, is there 11 anything that she might know that you wouldn't?</p> <p>12 A. No.</p> <p>13 Q. Okay. That's helpful. Okay. If you turn to 14 the second page, the first person listed on here is Amar 15 Ali, and he's listed as a partner at A to Z Wholesale, 16 Wine and Spirits. How long have you known Amar?</p> <p>17 A. Probably -- well, I'm sure over a year, 18 either -- maybe late '14, early '15.</p> <p>19 Q. And he gives his address as Dallas. Is he 20 primarily in Dallas?</p> <p>21 A. Yes.</p> <p>22 Q. When you have meetings with Amar, do you do 23 them in Dallas, or do you do them here?</p> <p>24 A. San Antonio.</p> <p>25 Q. Does he travel to San Antonio often?</p>	<p>1 Q. I think you mentioned May as being a big date 2 coming up.</p> <p>3 A. Yes.</p> <p>4 Q. What's going to happen in May?</p> <p>5 A. All the approvals and all the regulations and 6 laws, both TTB and TABC and the Mexico one, everything 7 will be, I think, taken care of.</p> <p>8 Q. And who's handling those applications?</p> <p>9 A. As far as I know, Ramon and Trey.</p> <p>10 Q. Will the final recipe, for lack of a better 11 word, be done by May?</p> <p>12 A. Yeah. It has to be, yes.</p> <p>13 Q. Is it done now, today?</p> <p>14 A. No.</p> <p>15 Q. Do you know how many different versions they're 16 working on?</p> <p>17 A. No.</p> <p>18 Q. Am I right to assume that it's the distiller 19 that makes that decision about what the final recipe -- 20 is there a better word than "recipe"?</p> <p>21 A. The distiller and the bottler.</p> <p>22 Q. Okay. Working together will decide that?</p> <p>23 A. (Witness nods affirmatively.)</p> <p>24 Q. Okay. Let's move down to Number 2. We've got 25 these -- the three folks at Tequila, Don Ramon, which I</p>
Page 70	Page 72
<p>1 A. Yes.</p> <p>2 Q. It says here he's a partner. Do you know his 3 other partners?</p> <p>4 A. No.</p> <p>5 Q. Is he -- as a partner, as far as you understand 6 it, is he an owner of A to Z?</p> <p>7 A. As far as I understand, he's an owner.</p> <p>8 Q. Okay. Do you know of other liquor products 9 that A to Z distributes similar to what you're planning 10 right now, a private label arrangement where they pay 11 royalties back?</p> <p>12 A. I do not know.</p> <p>13 Q. You don't know?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Okay. Has he mentioned that he's done this 16 type of arrangement before?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Do you anticipate having to pay A to Z anything 19 to start doing this distribution?</p> <p>20 A. Not that I know of.</p> <p>21 Q. So it sounds like A to Z is taking a risk 22 buying this product to sell it. And they're going to pay 23 you a royalty on that. Is that -- am I anticipating this 24 arrangement correctly?</p> <p>25 A. We don't have any agreement as of now.</p>	<p>1 believe we already discussed the meeting that you had 2 with them in February; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. The third, Feliciano Vivanco y Asociados. My 5 Spanish is poor. I'm sorry. Was this one of those 6 meetings that you had on your trip to Guadalajara in 7 September?</p> <p>8 A. You moved down to --</p> <p>9 Q. Yes.</p> <p>10 A. -- Feliciano, which is Sergio.</p> <p>11 Q. Okay. This is Sergio.</p> <p>12 A. Correct.</p> <p>13 Q. The person that we -- we've already discussed 14 this. This was your trip in September.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. If we flip to the next page, the first 17 person on there is Trey Azar, founder and master 18 distiller of Azar Distilling, LLC. And I think we just 19 discussed that Trey is the son of a former business 20 partner?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So how old is Trey, approximately?</p> <p>23 A. I think late 30's.</p> <p>24 Q. Okay. So have you known him a long time?</p> <p>25 A. Since 2000.</p>

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<p>1 Q. And what does "master distiller" mean?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. Is that a title he gave himself, or is</p> <p>4 it a --</p> <p>5 A. I have no idea on the distillation part.</p> <p>6 Q. And we just talked about the meeting you had</p> <p>7 December 30th with Trey; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. The next person down is Amar Ali in Dallas.</p> <p>10 A. Yes.</p> <p>11 Q. And we just discussed Amar, also, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And the plan is to have A to Z be your</p> <p>14 distributor of this product; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. The person below Amar is Raul Romero, and I</p> <p>17 think we just discussed that Raul is the -- is going to</p> <p>18 be the distiller; is that correct? He works for the</p> <p>19 distiller?</p> <p>20 A. I don't know the connection.</p> <p>21 Q. Okay. By "don't know the connection," you</p> <p>22 don't know if he's an employee or --</p> <p>23 A. Yeah, I don't know the capacity or if he's the</p> <p>24 owner or -- I don't know the -- their company structure</p> <p>25 at all.</p>	<p>1 do they keep you copied on their communications?</p> <p>2 A. No.</p> <p>3 Q. And does Amar keep you copied on his</p> <p>4 communications with Trey and Raul?</p> <p>5 A. No.</p> <p>6 Q. Do they regularly report back to you what</p> <p>7 they're doing?</p> <p>8 A. No.</p> <p>9 Q. So in order to get status updates on this, who</p> <p>10 do you call?</p> <p>11 A. The last one that told me anything was Trey.</p> <p>12 Q. And when was that?</p> <p>13 A. He said -- he said -- about December, January,</p> <p>14 February -- February, telling me it looks like, you know,</p> <p>15 they're going to be able to work it out.</p> <p>16 Q. And what did he mean by "work it out"?</p> <p>17 A. In other words, the production cost and</p> <p>18 transportation, all the details.</p> <p>19 Q. So in February, last month?</p> <p>20 A. No, excuse me. Probably January.</p> <p>21 Q. And you said this is Trey who called you?</p> <p>22 A. Yes. He just gave me a call.</p> <p>23 Q. Did he give you any details about the</p> <p>24 production costs and that --</p> <p>25 A. No.</p>
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<p>1 Q. Okay. But he somehow works for the folks that</p> <p>2 are going to be distilling your product?</p> <p>3 A. He's been making the decisions for them, yes.</p> <p>4 Q. And by -- what do you mean by making the</p> <p>5 decisions for them?</p> <p>6 A. He is working with Trey to -- trying to make</p> <p>7 the project work.</p> <p>8 Q. And is he based out of Mexico, Raul?</p> <p>9 A. I don't know, Miss.</p> <p>10 Q. Okay. Had you met him before the December 3rd</p> <p>11 meeting?</p> <p>12 A. Yes.</p> <p>13 Q. And when had you met him before?</p> <p>14 A. When Amar and he and I think his father -- I</p> <p>15 don't know -- were trying to sell me Antigua Cruz, you</p> <p>16 know, and Ronnie was there, and I was listening to them,</p> <p>17 you know, trying to sell the company Antigua Cruz.</p> <p>18 Q. Okay. So when was that meeting?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you know if Trey and Raul have worked</p> <p>21 together before?</p> <p>22 A. No.</p> <p>23 MR. PAUL: You don't know or --</p> <p>24 A. I don't know.</p> <p>25 Q. You don't know. Okay. And do they keep you --</p>	<p>1 Q. He didn't give you any details on dollars,</p> <p>2 volume, no details at all?</p> <p>3 A. No.</p> <p>4 Q. Okay. And when did he think that they would be</p> <p>5 able to get this worked out by?</p> <p>6 A. May.</p> <p>7 Q. Did he indicate when he anticipates being able</p> <p>8 to actually get bottles on shelves here in Texas?</p> <p>9 A. No.</p> <p>10 Q. Did he indicate when he anticipates being able</p> <p>11 to start bottling the product?</p> <p>12 A. Which was May.</p> <p>13 Q. So in May, they think they're actually going to</p> <p>14 start putting Tequila in bottles?</p> <p>15 A. That is their plan that Trey told me.</p> <p>16 Q. Do you know, are they planning to start</p> <p>17 marketing before that?</p> <p>18 A. I don't know.</p> <p>19 Q. Did he indicate when he thought that they would</p> <p>20 start marketing?</p> <p>21 A. I don't know.</p> <p>22 Q. This is probably a good time. Do you need a</p> <p>23 break?</p> <p>24 A. What's that?</p> <p>25 Q. Do you need a break?</p>



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<p>1       <b>A.   Probably.</b></p> <p>2               MS. MEYER: Okay. This is a good time to</p> <p>3 take one. We can go off the record.</p> <p>4               (Recess from 10:33 a.m. to 10:41 a.m.)</p> <p>5       Q.   (By Ms. Meyer) Let's talk about Exhibit 7, or</p> <p>6 what will be labeled Exhibit 7.</p> <p>7               (Exhibit Number 7 marked)</p> <p>8       Q.   Do you want to flip through this, because it's</p> <p>9 probably 20-some pages, and let me know if you recognize</p> <p>10 this document. Do you recognize this document?</p> <p>11       <b>A.   I do not.</b></p> <p>12       Q.   Okay.</p> <p>13       <b>A.   Yeah.</b></p> <p>14       Q.   I'm going to represent to you that this is what</p> <p>15 appears to be a printout from the U.S. Patent and</p> <p>16 Trademark Office records related to your Mezquila</p> <p>17 application. And on it you will see, right up at the</p> <p>18 top, it says the filing date is January 29th, 2015. Does</p> <p>19 that sound like the right filing date?</p> <p>20       <b>A.   Correct.</b></p> <p>21       Q.   Okay. And this application was filed as an</p> <p>22 Intent To Use Application. Do you know what an Intent To</p> <p>23 Use Application is?</p> <p>24       <b>A.   No.</b></p> <p>25       Q.   I think we've established so far, and you can</p>	<p>1 you have any documents talking about, discussing, or were</p> <p>2 related to using the Mezquila trademark?</p> <p>3       <b>A.   No.</b></p> <p>4       Q.   Okay. And as of January 29th, as of that day,</p> <p>5 did you have any documents related to your plans for use</p> <p>6 of the Mezquila mark?</p> <p>7       <b>A.   Just the ones that have been introduced.</b></p> <p>8       Q.   Okay. We've talked about some of these</p> <p>9 documents. Were any of those before January 29th, 2015?</p> <p>10       <b>A.   No.</b></p> <p>11       Q.   Okay.</p> <p>12               MR. PAUL: Thank you for clarifying it.</p> <p>13               MS. MEYER: Absolutely. It's good to be</p> <p>14 clear.</p> <p>15       Q.   (By Ms. Meyer) Have you ever filed a Federal</p> <p>16 Trademark Application before?</p> <p>17       <b>A.   Yes.</b></p> <p>18       Q.   And for what?</p> <p>19       <b>A.   For -- I guess Mezquila.</b></p> <p>20       Q.   Anything other than Mezquila?</p> <p>21       <b>A.   No, Mezquila. We filed for Mezquila.</b></p> <p>22       Q.   Let's talk about the regulatory issues in</p> <p>23 selling alcohol. Alcohol is highly regulated; is that</p> <p>24 fair to say?</p> <p>25       <b>A.   Repeat again.</b></p>
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<p>1 correct me if I'm wrong, that you hadn't sold any</p> <p>2 Mezquila products as of January, 2015, and, in fact, you</p> <p>3 haven't sold any yet; is that correct?</p> <p>4       <b>A.   No.</b></p> <p>5       Q.   That's incorrect, or you haven't sold any</p> <p>6 products?</p> <p>7       <b>A.   I'm trying to understand. No, we haven't sold</b></p> <p>8 <b>any products. No.</b></p> <p>9       Q.   Okay. As of January 29th, 2015, did you have</p> <p>10 any documents, anything on paper showing your plans for</p> <p>11 use of the Mezquila mark?</p> <p>12       <b>A.   No documents, no.</b></p> <p>13               MR. PAUL: Can I get you to ask that</p> <p>14 again, because as of -- it's ambiguous, to me. Are you</p> <p>15 asking before January?</p> <p>16               MS. MEYER: Yes. We can go with before</p> <p>17 January 29 --</p> <p>18               MR. PAUL: Yeah. Okay.</p> <p>19               THE WITNESS: She said "before."</p> <p>20               MR. PAUL: If you -- well, she said "as</p> <p>21 of," but if you interpret it "before," that's fine.</p> <p>22               THE WITNESS: I heard "before." That's</p> <p>23 what I heard.</p> <p>24       Q.   (By Ms. Meyer) Okay. So let's talk about both,</p> <p>25 just to be super clear. Before January 29th, 2015, did</p>	<p>1       Q.   Alcohol is highly regulated; is that fair to</p> <p>2 say?</p> <p>3       <b>A.   Very fair to say.</b></p> <p>4       Q.   Okay. And what regulations do you have to meet</p> <p>5 to sell Tequila in the United States?</p> <p>6       <b>A.   The details, I do not know.</b></p> <p>7       Q.   And what regulations do you have to meet to</p> <p>8 import Tequila into the United States?</p> <p>9       <b>A.   I do not know.</b></p> <p>10       Q.   Okay. Do you know the regulations needed to</p> <p>11 export Tequila from Mexico to the United States?</p> <p>12       <b>A.   I do not know.</b></p> <p>13       Q.   Okay. Does Texas have state regulations</p> <p>14 regarding sale of liquor, and specifically Tequila?</p> <p>15       <b>A.   I'm sure they do.</b></p> <p>16       Q.   But you don't know those?</p> <p>17       <b>A.   No.</b></p> <p>18       Q.   Do you have any copies of documents that anyone</p> <p>19 involved in this Mezquila project have submitted to the</p> <p>20 regulators?</p> <p>21       <b>A.   No.</b></p> <p>22       Q.   Do you know if they have submitted documents to</p> <p>23 regulators?</p> <p>24       <b>A.   Yeah.</b></p> <p>25       Q.   And would those submissions have been made by</p>

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<p>1 Trey and Raul?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And would Amar be doing that, too?</p> <p>4 <b>A. Maybe.</b></p> <p>5 Q. Okay. So Trey, Raul and Amar likely are the</p> <p>6 people submitting regulation submissions?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Do you know why they don't send you copies of</p> <p>9 these things?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Have you asked for copies of them?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Why not?</p> <p>14 <b>A. It's not my -- how would you say it -- I just</b></p> <p>15 <b>don't know. I don't know what to do with them, really.</b></p> <p>16 Q. Do you know, are they submitting these</p> <p>17 documents to the regulators in the names of their own</p> <p>18 companies or in your name?</p> <p>19 <b>A. I do not know.</b></p> <p>20 Q. Have you had to sign anything to regulators?</p> <p>21 <b>A. No.</b></p> <p>22 MS. MEYER: We'll label this Exhibit 8.</p> <p>23 (Exhibit Number 8 marked)</p> <p>24 Q. (By Ms. Meyer) And take a little bit of time to</p> <p>25 flip through this, the majority of which is in Spanish.</p>	<p>1 Q. Okay. Do you know if the goods that you seek</p> <p>2 to register the Mezquila mark in Mexico, are those the</p> <p>3 same as for the U.S. application? Tequila, mainly.</p> <p>4 <b>A. The goods --</b></p> <p>5 MR. PAUL: I'm going to object.</p> <p>6 <b>A. I just don't know.</b></p> <p>7 MR. PAUL: That's not clear to me.</p> <p>8 Q. You don't know what goods were claimed in your</p> <p>9 Mexico application?</p> <p>10 <b>A. We're not talking about goods. All we're</b></p> <p>11 <b>talking about is brand name, trademark. That's it. I</b></p> <p>12 <b>mean, that's all I know.</b></p> <p>13 Q. I'll represent to you that in trademark</p> <p>14 applications, we have to say what goods you're going to</p> <p>15 put the mark on, and --</p> <p>16 <b>A. Well, it's Tequila.</b></p> <p>17 Q. Okay. So the intention for the Mexico</p> <p>18 application was Tequila?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And that's the same as it is for the U.S.</p> <p>21 application?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Are you intending on selling anything other</p> <p>24 than Tequila under the Mezquila mark?</p> <p>25 <b>A. As far as I know, we have not.</b></p>
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<p>1 Do you recognize this?</p> <p>2 <b>A. What do you want me to look -- no, I do not</b></p> <p>3 <b>recognize it.</b></p> <p>4 Q. Okay. I'll represent to you that this is a</p> <p>5 document or multiple documents that we received from you,</p> <p>6 through your attorney, that is related to your</p> <p>7 application for the trademark Mezquila in Mexico. Did</p> <p>8 you file an application in Mexico for the trademark</p> <p>9 Mezquila?</p> <p>10 <b>A. I, personally, no.</b></p> <p>11 Q. Did you instruct your attorneys to file an</p> <p>12 application in Mexico?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Are you working directly with counsel in</p> <p>15 Mexico, or do you work with your U.S. counsel to</p> <p>16 coordinate with Mexico?</p> <p>17 <b>A. The only person I work with is Mr. Paul.</b></p> <p>18 Q. Okay. Did you file an application for Mezquila</p> <p>19 in any other country?</p> <p>20 <b>A. I don't remember. I really don't remember,</b></p> <p>21 <b>Miss.</b></p> <p>22 Q. Okay. Did you file an application for the</p> <p>23 Mezquila trademark with the State of Texas?</p> <p>24 <b>A. I don't know if the attorney did it. I did</b></p> <p>25 <b>not.</b></p>	<p>1 Q. In the U.S., your intention is Tequila; is that</p> <p>2 correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And in Mexico your intention is Tequila; is</p> <p>5 that correct?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Have you identified a distributor to distribute</p> <p>8 Mezquila in Mexico?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Do you know if A to Z distributes products in</p> <p>11 Mexico?</p> <p>12 <b>A. No.</b></p> <p>13 Q. No, you don't know, or you don't --</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. Okay. Is your plan to just distribute product</p> <p>16 in the United States, or are you going to distribute</p> <p>17 product in Mexico, too?</p> <p>18 <b>A. I think first the United States.</b></p> <p>19 Q. Okay. Do you have any documents related to</p> <p>20 your plans to sell products in Mexico?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Do you know the status of your application in</p> <p>23 Mexico?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you know that it's been refused,</p>

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<p>1 Agavequila?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. Okay. So do you have any plans for production</p> <p>4 of the Mixquila?</p> <p>5 <b>A. At this point, no.</b></p> <p>6 Q. Okay. And have you met with distillers or</p> <p>7 bottlers?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. At the time you filed these three</p> <p>10 applications, was it your intent that these would be</p> <p>11 products sold together?</p> <p>12 <b>A. Could be.</b></p> <p>13 Q. And was it your intention that they would be</p> <p>14 marketed together?</p> <p>15 <b>A. Do not know.</b></p> <p>16 Q. Why did you file three applications so closely</p> <p>17 together?</p> <p>18 <b>A. Just for protection of name.</b></p> <p>19 Q. Who came up with the Agavequila name?</p> <p>20 <b>A. I did.</b></p> <p>21 Q. And who came up with the Mixquila name?</p> <p>22 <b>A. I did.</b></p> <p>23 Q. All three seem to have a similarity, being the</p> <p>24 "quila" ending. Were all three intended to be Tequila</p> <p>25 products?</p>	<p>1 Q. Okay. And that's a Mexican law?</p> <p>2 <b>A. It's a Mexican law, plus it's recognized by the</b></p> <p>3 <b>whole world. How that works, I don't know.</b></p> <p>4 Q. Okay. How does Mezcal work? Is that also an</p> <p>5 agave-based liquor?</p> <p>6 <b>A. Agave-based, and Mezcal has to be made in the</b></p> <p>7 <b>State of Oaxaca.</b></p> <p>8 Q. Okay. But they're two separate types of</p> <p>9 liquor; is that correct?</p> <p>10 <b>A. Yes, they're all the same, agave-based.</b></p> <p>11 Q. Okay. Now, for the Tequila that you're</p> <p>12 planning to make or the agave-based spirits that you're</p> <p>13 planning on making, you're planning on those being</p> <p>14 Tequila, not Mezcal; is that correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. And because you're labeling them "Tequila," can</p> <p>17 that extra 49 percent also include Mezcal?</p> <p>18 <b>A. No, ma'am. You're confusing things. Mezquila</b></p> <p>19 <b>is just a brand name. It has nothing to do with any</b></p> <p>20 <b>different type of liquor as the Tequila. Tequila is it.</b></p> <p>21 Q. Okay.</p> <p>22 <b>A. It's just a brand name, is what I don't</b></p> <p>23 <b>understand, so...</b></p> <p>24 Q. What do you mean by "just a brand name"?</p> <p>25 <b>A. Yeah, just like I want to put your name on it,</b></p>
Page 94	Page 96
<p>1 <b>A. Correct.</b></p> <p>2 Q. Was there an intention that any of them be</p> <p>3 different from the other?</p> <p>4 <b>A. No.</b></p> <p>5 Q. And do you have any documents before</p> <p>6 February 6th, 2015, showing plans for using Mixquila?</p> <p>7 <b>A. No.</b></p> <p>8 MS. MEYER: Why don't we take a break?</p> <p>9 (Recess from 11:03 a.m. to 11:11 a.m.)</p> <p>10 Q. (By Ms. Meyer) Mr. Gabriel, I only have a few</p> <p>11 more questions for you. Just to clarify, the agreements</p> <p>12 that you have with your -- the distiller, the bottler and</p> <p>13 the distributor, you don't have written agreements yet</p> <p>14 with them.</p> <p>15 <b>A. I do not --</b></p> <p>16 Q. Is that correct?</p> <p>17 <b>A. -- have any written agreement at this point.</b></p> <p>18 Q. With any of those three, do you have an oral</p> <p>19 agreement with them that you would consider a contract?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Okay. Are there any other agave-based liquors</p> <p>22 that aren't Tequila? I'm a little unclear about how that</p> <p>23 works with what's called Tequila and what's not.</p> <p>24 <b>A. Tequila, by law, has to be made in the State of</b></p> <p>25 <b>Jalisco, Mexico.</b></p>	<p>1 I want to put Rosalie's name on the Tequila, I want to</p> <p>2 put my son's name. It's any name that you come up with</p> <p>3 that you trademark and you use it to sell an item.</p> <p>4 That's why we have Cuervo, that's why we have Don Ramon,</p> <p>5 that's why we have Don Julio, and so forth, and so forth,</p> <p>6 and so forth. It's just a brand name that you just</p> <p>7 trademark and use.</p> <p>8 MS. MEYER: Well, I think I'm done. Do</p> <p>9 you have any questions for the witness?</p> <p>10 MR. PAUL: I do.</p> <p>11 THE WITNESS: You have questions for me?</p> <p>12 MR. PAUL: I do. Just a couple.</p> <p>13 EXAMINATION</p> <p>14 BY MR. PAUL:</p> <p>15 Q. Do you know whether they grow agave in South</p> <p>16 America?</p> <p>17 <b>A. They grow agave all over the world. Africa --</b></p> <p>18 <b>even Africa.</b></p> <p>19 Q. Could you make a distilled drink that used</p> <p>20 agave that was sourced from South America?</p> <p>21 <b>A. If the agave plant is grown there, you can make</b></p> <p>22 <b>any, you know, alcoholic drink out of the agave.</b></p> <p>23 Q. And you could use agave that was grown in</p> <p>24 Africa, as well?</p> <p>25 <b>A. It has been used to make -- distill agave, yes.</b></p>

Page 97		Page 99	
1	Q. Have you ever thought about using agave from	1	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2	South America as a potential option in your business?	2	TRADEMARK TRIAL AND APPEAL BOARD
3	<b>A. Not at this point, but it's possible.</b>	3	MAS CANTINAS, LLC, a )
4	MR. PAUL: Okay. I don't have any other	4	California Limited )
5	questions.	5	Liability Company, )
6	THE WITNESS: That was short, Mike.	6	Opposer, )
7	MS. MEYER: All right. Well --	7	vs. ) Opposition No. 91223574
8	MR. PAUL: I'm to the point.	8	ROSALIE GABRIEL, an )
9	MS. MEYER: -- we can go off the record.	9	individual citizen of the )
10	(WITNESS EXCUSED)	10	United States, and JOHNNY )
11		11	D. GABRIEL, an individual )
12		12	citizen of the United )
13		13	States, )
14		14	Applicant. )
15		15	
16		16	REPORTER'S CERTIFICATION
17		17	ORAL DEPOSITION OF JOHNNY GABRIEL
18		18	March 3, 2016
19		19	I, TINA C. FULLER, Certified Shorthand Reporter
20		20	in and for the State of Texas, hereby certify to the
21		21	following:
22		22	That the witness, JOHNNY GABRIEL, was duly
23		23	sworn by the officer and that the transcript of the oral
24		24	deposition is a true record of the testimony given by the
25		25	witness
			I further certify that pursuant to FRCP Rule
			30(f) (1) that the signature of the deponent:
			___X___ was requested by the deponent or a party
Page 98		Page 100	
1	CHANGES AND SIGNATURE	1	before the completion of the deposition and returned
2	WITNESS NAME: JOHNNY GABRIEL	2	within 30 days from date of receipt of the transcript.
3	DEPOSITION DATE: March 3, 2016	3	If returned, the attached Changes and Signature Page
4	PAGE LINE CHANGE OR CORRECTION REASON FOR CHANGE	4	contains any changes and the reasons therefor;
5	_____	5	_____ was not requested by the deponent or a
6	_____	6	party before the completion of the deposition.
7	_____	7	I further certify that I am neither attorney
8	_____	8	nor counsel for, related to, nor employed by any of the
9	_____	9	parties to the action in which this testimony was taken.
10	_____	10	Further, I am not a relative or employee of any attorney
11	_____	11	of record in this cause, nor am I financially or
12	_____	12	otherwise interested in the outcome of the action.
13	_____	13	Certified to by me on this 14th day of March, 2016.
14	_____	14	
15	_____	15	
16	_____	16	Tina C. Fuller, CSR
17	_____	17	Texas CSR 3633
18	_____	18	Expiration: 12/31/2016
19	I, JOHNNY GABRIEL, have read the foregoing	19	DepoTexas Firm Registration No. 539
20	deposition and hereby affix my signature that the same is	20	100 N.E. Loop 410, Suite 540
21	true and correct, except as noted above.	21	San Antonio, Texas 78216
22		22	210-481-7575
23		23	
24	JOHNNY GABRIEL	24	
25		25	

**Michael D. Paul**

---

**From:** Johnny Gabriel <jgabriel@gabrielspirits.com>  
**Sent:** Friday, November 06, 2015 11:10 AM  
**To:** Michael D. Paul  
**Subject:** Fwd: Mezquila-Time line-.xls  
**Attachments:** Mezquila-Time line-.xls

Sent from my iPad

Begin forwarded message:

**From:** "Gabriel Investment Group Inc." <[gabriel@gabrielspirits.com](mailto:gabriel@gabrielspirits.com)>  
**Date:** November 6, 2015 at 10:28:04 AM CST  
**To:** <[jgabriel@gabrielspirits.com](mailto:jgabriel@gabrielspirits.com)>  
**Subject:** FW: Mezquila-Time line-.xls

-----Original Message-----

From: Amar [<mailto:amar.ali@azwws.com>]  
Sent: Friday, November 06, 2015 9:57 AM  
To: Johnny D. Gabriel Sr.; Johnny D. Gabriel Sr.  
Subject: Mezquila-Time line-.xls

Here you go sir!

--Amar



# MEZQUILA

Request and get info from Mr. Gabriel's: -USPTO trademark docs ** -Trademark ownership information. Power of Attorney to sign the Co-responsibility Letter. *** Gabriel's task	Send Mr. Gabriels Letter of Co-responsibility format to be signed up by whoever has the Power of Attorney. Once we get it back apply before IMPI* to get the rights to produce Mezquila CTAP/Gabriels Task	Develop labels artwork: -Front-Brand -Back -UPCs for all KKUs We have the capability to do it if Mr. Gabriel's approves it.*	Once artwork is approved apply to TTBC for the corresponding COLA's (Certificates of Label Approval) AtoZ-CTAPremium Task	Once COLA's are approved apply to TABC for label approval. AtoZ-CTAPremium Task	Have labels printed Procure all materials: Bottle Cap Cardboard case CTAPremium Task	With IMPI approval we apply for CRT*** (Consejo Regulador del Tequila) Certificate of Compliance CTA Premium Task	Bottle and package Mezquila and get it ready for shipment CTAPremium Task
Process begins							
Event 1- Time not calculated	Event -2- 90 Days	Event-3- 8 days	Event-4- 45 to 60 days	Event-5- 5 days	Event-6- 14 days	Event-7- 3 days	Event-8- One day
During these 90 days we will perform events three to seven..							
Process ends							

\*IMPI=Instituto Mexicano de Proteccion Intelectual English: Mexican Government Entity that protects Intellectual Property, Trademarks, Patents, Copyrights, etc.

\*\*We can get this documentation from USPTO website.

\*\*\*Consejo Regulador del Tequila-English: Tequila Production Regulatory Council.

## Michael D. Paul

---

**From:** Gabriel Investment Group Inc. <gabriel@gabrielspirits.com>  
**Sent:** Wednesday, January 06, 2016 3:34 PM  
**To:** Michael D. Paul  
**Subject:** FW: Interjet Itinerary

Mike,

Below are the travel documents for Mr. Gabriel's trip to Guadalajara Mexico for which you have requested.

*Lynette Starr-White*  
Executive Assistant  
Gabriel Investment Group  
10903 Gabriel's Pl  
San Antonio, TX 78217  
210.646.9992 ext. 206

---

**From:** Alejandro Valdes [mailto:alejandro@erdistributors.com]  
**Sent:** Tuesday, September 01, 2015 4:32 PM  
**To:** gabriel@gabrielspirits.com  
**Subject:** Fwd: Interjet Itinerary

Hello, attach you will find the tickets round trip to Guadalajara Mexico.

Best regards

Alejandro Valdes  
ER Distributors LLC  
San Antonio Texas

Begin forwarded message:

**From:** [ventasweb@interjet.com.mx](mailto:ventasweb@interjet.com.mx)  
**Date:** September 1, 2015 at 4:27:42 PM CDT  
**To:** [Alejandro@erdistributors.com](mailto:Alejandro@erdistributors.com)  
**Subject:** Interjet Itinerary  
**Reply-To:** [ventasweb@interjet.com.mx](mailto:ventasweb@interjet.com.mx)



ALEJANDRO VALDES

**Thanks for purchasing with Interjet!**

It's a pleasure to welcome you and offer you the service you deserve.

- It's important that you arrive at the corresponding airport **2 hours** prior to

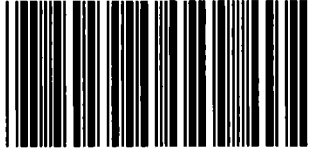


your flight.

- In the case of International destinations, it is necessary to arrive 3 hours prior to take off.
- Similarly, present the email we sent you as confirmation at one of the check-in counters.

## Itinerary

Confirmation code : NBSDYQ



## Passenger information:

Name	Customer number	Flight #/Seat #
JOHNNY DEEP		957/22A 956/12F
GABRIEL		
ROSALIE PEREZ		957/22B 956/12E
GABRIEL		
CHARLES EDWIN		957/22C 956/17D
PARISH		

## Flight information:

Date	Flight	Fare Class	Depart	Depart time	Arrive	Arrive time
03/09/2015	957	J	San Antonio (SAT)	13:30 PM	Guadalajara (GDL)	15:45 PM
06/09/2015	956	J	Guadalajara (GDL)	10:25 AM	San Antonio (SAT)	12:30 PM

## Contact information

### Address

78232

### Telephone Numbers:

Home:2102848407

E-mail:[Alejandro@erdistributors.com](mailto:Alejandro@erdistributors.com)

## Non-refundable.

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Charges apply for any changes made.

This document is NOT a boarding pass.

Your purchase is guaranteed. Your confirmation code is the reference for obtaining your boarding pass or for checking in directly at the airport before the departure of your flight. Don't forget that at any moment you may be asked to



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<hr/>	
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USA (toll free): 1 866 2858 307  
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Office Hours: 09:00am-06:00pm

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included. **Call Center Service Fee:** \$5 USD fee tax included. **Promotional fares classification:** "W", "N", "R", "J", "L", "H", "T", "Q", "E" and "C". **Regular fares classification:** "A", "U", "V", "X", "P", "O", "M", "K", "I", "G", "Y".

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Michael D. Paul

From: Johnny Gabriel <jgabriel@gabrielgifts.com>  
Sent: Friday, November 06, 2015 11:11 AM  
To: Michael D. Paul  
Subject: Fwd: Mezquila Labels

Sent from my iPad

Begin forwarded message:

From: "Gabriel Investment Group Inc." <jgabriel@gabrielgifts.com>  
Date: November 5, 2015 at 7:51:34 AM CST  
To: <jgabriel@gabrielgifts.com>  
Subject: FW: Mezquila Labels

From: Amar [mailto:amar.a@azovis.com]  
Sent: Thursday, November 05, 2015 7:35 AM  
To: Michael D. Paul; Johnny D. Gabriel Sr.  
Subject: Fwd: Mezquila Labels

Mr. G

Here are a couple of sample labels for your consideration.

I can get you more if you don't like either style.

I will send you timeline in a separate email.

--Amar



# MEZQUILA

## TEQUILA

### GOLD

1lt

Hecho en México

MEZQUILA

TEQUILA

SILVER

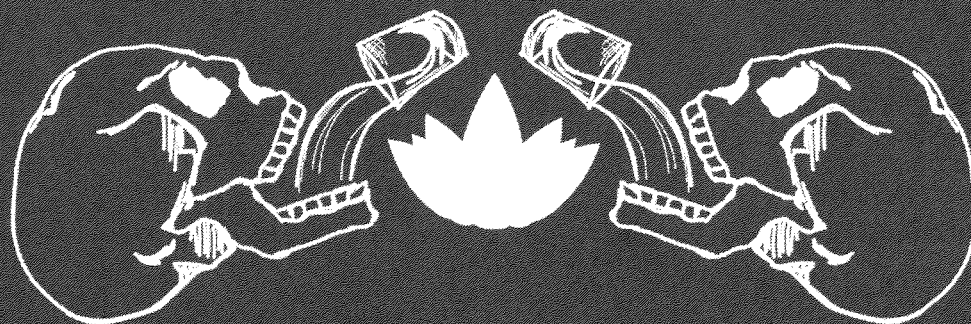
116

Hecho en México



# MEZQUILA

— TEQUILA —



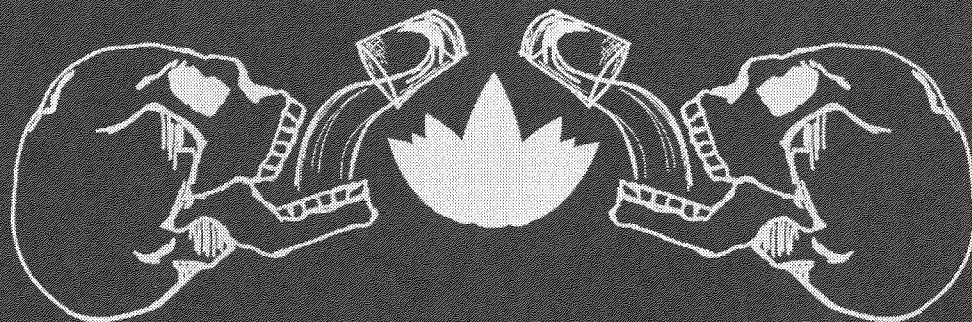
— GOLD —

1LT

HECHO EN MÉXICO

# MEZQUILA

— TEQUILA —



— SILVER —

1LT

HECHO EN MÉXICO

## Michael D. Paul

---

**From:** Gabriel Investment Group Inc. <gabriel@gabrielspirits.com>  
**Sent:** Thursday, December 17, 2015 4:07 PM  
**To:** Michael D. Paul  
**Subject:** FW: Mezquila labels  
**Attachments:** Mezquila labels.zip; ATT00004.htm

Mike,

I am sending you few emails Mr. Gabriel has received about the trademarks and labels.

In February Mr. Gabriel met at Don Ramon Distillery with Carlos Uriel Arnaiz, Enrique Ramon, and Alejandro Valdes.

In early September Mr. Gabriel met at Sergio Vivanco Distillery with Feliciano Vivanco y Asociados.NOM 1414.

On December 3<sup>rd</sup> Mr. Gabriel also met with Trey Azar (Azar Distillery in San Antonio) and Raul Romero is with Compania Tequilera de Arandas, SA DE CV

Let me know if you have any questions about this matter.

Thank you,

*Lynette Starr-White*  
Executive Assistant  
Gabriel Investment Group  
10903 Gabriel's Pl  
San Antonio, TX 78217  
210.646.9992 ext. 206

---

**From:** Johnny Gabriel [<mailto:jgabriel@gabrielspirits.com>]  
**Sent:** Thursday, December 17, 2015 2:52 PM  
**To:** AS  
**Subject:** Fwd: Mezquila labels

Sent from my iPad

Begin forwarded message:

**From:** Raul Romero <[raulromero1@icloud.com](mailto:raulromero1@icloud.com)>  
**Date:** December 16, 2015 at 6:04:08 PM CST  
**To:** Amar <[amar.ali@azwws.com](mailto:amar.ali@azwws.com)>  
**Cc:** [jgabriel@gabrielspirits.com](mailto:jgabriel@gabrielspirits.com), Trey Azar <[trey@cincovodka.com](mailto:trey@cincovodka.com)>  
**Subject:** Mezquila labels

Amar, attached are Mezquila, mixto tequila labels.







TEQUILA

MEZQUILA



GOLD

PRODUCT OF MEXICO

CONT. NET 1LT

40% Alc. Vol. (80 PROOF)

GOVERNMENT WARNING : (1) ACCORDING TO THE SUR-  
GEON GENERAL WOMAN SHOULD NOT DRINK ALCOHOLIC  
BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK  
OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEV-  
ERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OP-  
ERATE MACHINERY AND MAY CAUSE HEALTH PROBLEMS.



CRT

NDM  
1460



Bottled at: Azar Distilling, LLC  
San Antonio, TX 78263

APP 000139



TEQUILA

MEZQUILA



SILVER

PRODUCT OF MEXICO

CONT. NET 1LT

40% Alc. Vol. (80 PROOF)

GOVERNMENT WARNING : (1) ACCORDING TO THE SUR-  
GEON GENERAL WOMAN SHOULD NOT DRINK ALCOHOLIC  
BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK  
OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEV-  
ERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OP-  
ERATE MACHINERY AND MAY CAUSE HEALTH PROBLEMS.



Bottled at: Azar Distilling, LLC  
San Antonio, TX 78263  
APP 000140

They comply with CRT (Consejo Regulador del Tequila) and TTB terminology and size.

However Trey will need to generate his own UPC and made whichever other modifications he feels are necessary.

Documents to be reviewed by Trey and Mr. Gabriels will follow.

Regards,

Regards,  
Raul Romero  
CTA Premium Brands, LLC  
2223 Waterloo City Lane  
Austin, TX 78741  
[raulromero1@icloud.com](mailto:raulromero1@icloud.com)  
Mobil: 512-565-0003